

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TEXAS

3 SHERMAN DIVISION

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6 THE UNITED STATES OF AMERICA] CASE NO. 4:12CR16

7 VS.] 9 AM, DECEMBER 4, 2012

8 RENE CORTEZ SALAZAR, ET AL] PLANO, TEXAS
9 -----

10
11 REPORTER'S TRANSCRIPT OF JURY TRIAL

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19 THE HONORABLE RICHARD A. SCHELL, U.S. DISTRICT JUDGE, PRESIDING

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23
24 PROCEEDINGS REPORTED IN REALTIME USING COMPUTERIZED STENOTYPE,

25 TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION.

1 [COURT REPORTER'S NOTES 20121204, 9 AM, TUESDAY,
2 DECEMBER 4, 2012, PLANO, TEXAS, U.S. DISTRICT JUDGE RICHARD A.
3 SCHELL PRESIDING]

4 APPEARANCES:

5 FOR THE GOVERNMENT: ERNEST GONZALEZ
6 TRACEY BATSON
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12 FOR THE DEFENDANT RENE CORTEZ SALAZAR:

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14 ATTORNEY AT LAW
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18 FOR THE DEFENDANT TIMOTHY LEDON BOWEN:

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1 FOR THE DEFENDANT JUAN CARLOS VEGA:

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3 ATTORNEY AT LAW

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6 972-965-1016

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9
10 [OPEN COURT, DEFENDANTS PRESENT, NO VENIRE]

11 THE COURT: THIS CASE IS STYLED "THE UNITED STATES
12 VERSUS RENE CORTEZ SALAZAR, TIMOTHY LEDON BOWEN AND JUAN
13 CARLOS VEGA." THEY ARE DEFENDANTS 1, 14 AND 34 AS LISTED
14 IN THE SECOND SUPERSEDING INDICTMENT.

15 I HAVE PRESENT IN THE COURTROOM ASSISTANT U.S.
16 ATTORNEYS ERNEST GONZALEZ AND TRACEY BATSON FOR THE GOVERNMENT.
17 GOOD MORNING.

18 MS. BATSON: GOOD MORNING, YOUR HONOR.

19 MR. GONZALEZ: GOOD MORNING, YOUR HONOR.

20 THE COURT: AND ALSO AT GOVERNMENT'S COUNSEL TABLE
21 ARE GARIN REETZ OF THE U.S. ATTORNEY'S OFFICE. GOOD MORNING.

22 MR. REETZ: GOOD MORNING, YOUR HONOR.

23 THE COURT: AND SPECIAL AGENT JOE MATA OF THE DRUG
24 ENFORCEMENT AGENCY. GOOD MORNING.

25 SPECIAL AGENT MATA: GOOD MORNING, YOUR HONOR.

09:06AM 1 THE COURT: AND DETECTIVE BRIAN MCCLARAN OF THE
09:06AM 2 SHERMAN POLICE DEPARTMENT. GOOD MORNING.

09:06AM 3 DETECTIVE MCCLARAN: GOOD MORNING, YOUR HONOR.

09:06AM 4 THE COURT: AND AT DEFENSE COUNSEL TABLE I HAVE
09:06AM 5 DEFENDANT NUMBER 1, RENE CORTEZ SALAZAR, AND HIS LAWYER,
09:06AM 6 KYLE KEMP. GOOD MORNING.

09:06AM 7 MR. KEMP: GOOD MORNING, YOUR HONOR.

09:06AM 8 THE COURT: I KNOW WE HAVE A SPANISH-LANGUAGE
09:06AM 9 INTERPRETER HERE. IS MR. MAHLER INTERPRETING FOR MR. SALAZAR?
09:06AM 10 HE DOESN'T APPEAR TO BE.

09:06AM 11 MR. KEMP: NO, YOUR HONOR. I THINK IT'S JUST FOR
09:06AM 12 MR. VEGA.

09:06AM 13 THE COURT: ALL RIGHT.

09:06AM 14 I ALSO HAVE PRESENT TIMOTHY LEDON BOWEN, AND HE IS
09:06AM 15 DEFENDANT NUMBER 14, AND HE IS HERE WITH HIS LAWYER, JAMES
09:06AM 16 WHALEN.

09:06AM 17 MR. WHALEN: GOOD MORNING, YOUR HONOR.

09:06AM 18 THE COURT: GOOD MORNING.

09:06AM 19 AND THEN, FINALLY, DEFENDANT NUMBER 34, JUAN CARLOS
09:06AM 20 VEGA, AND HE IS PRESENT WITH HIS COUNSEL, JOEL PETRAZIO. GOOD
09:07AM 21 MORNING.

09:07AM 22 MR. PETRAZIO: GOOD MORNING, YOUR HONOR.

09:07AM 23 THE COURT: ALL RIGHT.

09:07AM 24 FOR THE RECORD, WE HAVE OUR SPANISH-LANGUAGE
09:07AM 25 INTERPRETERS, MIKE MAHLER AND ALMA ADRIANO, AND THEY ARE

09:07AM 1 INTERPRETING ENGLISH INTO SPANISH FOR MR. VEGA.

09:07AM 2 THIS CASE IS SET FOR JURY SELECTION THIS MORNING.

09:07AM 3 THE ESTIMATE, MR. GONZALEZ, I BELIEVE, THAT YOU HAD GIVEN ME

09:07AM 4 WAS TWO WEEKS FOR TRIAL. IS THAT WHAT I SHOULD ADVISE THE JURY
09:07AM 5 ON?

09:07AM 6 MR. GONZALEZ: NO, YOUR HONOR. OBVIOUSLY, WHEN I
09:07AM 7 GAVE THAT ESTIMATE, THERE WERE A LOT MORE DEFENDANTS. MY
09:07AM 8 ESTIMATE TODAY WOULD BE PROBABLY SEVEN DAYS.

09:07AM 9 THE COURT: SEVEN DAYS OF TRIAL? OKAY. SO A WEEK
09:07AM 10 AND A HALF?

09:07AM 11 MR. GONZALEZ: YES, YOUR HONOR.

09:07AM 12 THE COURT: ALL RIGHT.

09:07AM 13 DO DEFENSE COUNSEL HAVE A DIFFERENT ESTIMATE?
09:07AM 14 ANYONE?

09:07AM 15 MR. PETRAZIO: NO, YOUR HONOR.

09:07AM 16 THE COURT: OKAY.

09:08AM 17 WE HAVE 48 JURORS WHO ARE PRESENT AND READY TO BE
09:08AM 18 BROUGHT INTO THE COURTROOM FOR JURY SELECTION.

09:08AM 19 BEFORE WE DO THAT, THOUGH, MR. GONZALEZ, YOU'VE
09:08AM 20 FILED A NUMBER OF AMENDED WITNESS LISTS. THE LATEST ONE THAT I
09:08AM 21 HAVE IS DOCUMENT NUMBER 650. IS THAT YOUR MOST-RECENT WITNESS
09:08AM 22 LIST?

09:08AM 23 MR. GONZALEZ: YES, YOUR HONOR.

09:08AM 24 THE COURT: OKAY.

09:08AM 25 AND THEN I RECEIVED THIS MORNING AN AMENDED EXHIBIT

09:08AM 1 LIST, WHICH IS DOCUMENT NUMBER 652. WOULD THAT BE YOUR FINAL
09:09AM 2 EXHIBIT LIST?

09:09AM 3 MR. GONZALEZ: YES, YOUR HONOR.

09:09AM 4 THE COURT: OKAY.

09:09AM 5 NOW, THERE ARE SOME MOTIONS THAT WERE FILED VERY
09:09AM 6 LATE, BEYOND THE DEADLINE FOR FILING MOTIONS UNDER THE PRETRIAL
09:09AM 7 ORDER. I'VE NEVERTHELESS CONSIDERED SOME OF THOSE LATE
09:09AM 8 MOTIONS. HOWEVER, IT LOOKS LIKE SOME WERE FILED LAST NIGHT
09:09AM 9 AND WERE JUST HANDED TO ME. SO I HAVE NOT HAD A CHANCE TO
09:09AM 10 CONSIDER THOSE AND WILL NOT HAVE A CHANCE TO CONSIDER THOSE.

09:09AM 11 LET ME TAKE UP THE ONES THAT I HAVE TAKEN THE TIME
09:09AM 12 TO CONSIDER ALTHOUGH THEY WERE UNTIMELY.

09:09AM 13 I'LL START WITH RENE SALAZAR. MR. KEMP, YOU FILED
09:09AM 14 A MOTION IN LIMINE, THAT'S DOCUMENT NUMBER 613, SEEKING TO HAVE
09:10AM 15 THE COURT INSTRUCT THE GOVERNMENT NOT TO REFER TO ANY PRIOR OR
09:10AM 16 SUBSEQUENT BAD ACTS OR CONVICTIONS OR ANY GANG AFFILIATIONS OR
09:10AM 17 GANG TATTOOS ON THE PART OF MR. SALAZAR.

09:10AM 18 I DON'T KNOW IF THE GOVERNMENT WANTS TO RESPOND, BUT
09:10AM 19 I DON'T BELIEVE ANY 404(B) NOTICE HAS EVER BEEN FILED AGAINST
09:10AM 20 MR. SALAZAR.

09:10AM 21 MR. GONZALEZ: THAT'S CORRECT, YOUR HONOR, NO 404(B)
09:10AM 22 NOTICE.

09:10AM 23 THE COURT: OKAY.

09:10AM 24 MR. KEMP, DID YOU JUST FILE THIS JUST TO BE
09:10AM 25 CAUTIOUS?

09:10AM 1 MR. KEMP: I DID, YOUR HONOR. AND, REALLY,
09:10AM 2 SPECIFICALLY JUST FOR THE GANG-AFFILIATION REFERENCES AND
09:10AM 3 TATTOO REFERENCES AND THINGS LIKE THAT. THAT'S REALLY WHAT
09:10AM 4 WE WERE TRYING TO PRECLUDE THE GOVERNMENT FROM GETTING INTO.

09:10AM 5 THE COURT: OKAY. ALL RIGHT.

09:10AM 6 I'LL ASK MS. SANFORD TO MAKE NOTATIONS AS I GO
09:10AM 7 THROUGH THESE MOTIONS TO MAKE A DOCKET ENTRY ON MY RULINGS.

09:11AM 8 FOR YOUR MOTION IN LIMINE, DOCUMENT NUMBER 613, I'LL
09:11AM 9 GRANT THAT. I'LL NOTE THAT THE COURT [SIC] HAS NOT FILED ANY
09:11AM 10 NOTICE OF INTENT TO OFFER 404(B) EVIDENCE AGAINST MR. SALAZAR,
09:11AM 11 BUT I'LL GRANT THE MOTION NEVERTHELESS.

09:11AM 12 MR. KEMP: THANK YOU, YOUR HONOR.

09:11AM 13 THE COURT: MR. KEMP, YOU ALSO FILED DOCUMENT
09:11AM 14 NUMBER 614, WHICH IS A MOTION TO ADOPT MOTIONS, OBJECTIONS
09:11AM 15 AND REQUESTS FOR INSTRUCTIONS OF CODEFENDANTS. SO YOU ARE
09:11AM 16 MOVING, I TAKE IT, TO ADOPT OTHER CODEFENDANTS' MOTIONS,
09:11AM 17 THEIR OBJECTIONS DURING TRIAL--IS THAT RIGHT?

09:11AM 18 MR. KEMP: CORRECT.

09:11AM 19 THE COURT: --AND JURY INSTRUCTIONS THAT OTHER
09:11AM 20 COUNSEL MAY OR MAY NOT FILE?

09:12AM 21 MR. KEMP: SPECIFICALLY THAT MR. WHALEN FILED.

09:12AM 22 THE COURT: JURY INSTRUCTIONS?

09:12AM 23 MR. KEMP: YES. HE FILED THOSE LAST NIGHT, IF
09:12AM 24 MEMORY SERVES.

09:12AM 25 THE COURT: OKAY. I DON'T HAVE ANY JURY INSTRUCTIONS.

09:12AM 1 OH, YOU HAVE THEM? OKAY. ALL RIGHT.

09:12AM 2 I'M TOLD THAT THEY WERE FILED. SO, MR. KEMP,
09:12AM 3 I'M GOING TO GRANT, IN PART, YOUR MOTION TO ADOPT MOTIONS,
09:12AM 4 OBJECTIONS AND INSTRUCTIONS, DOCUMENT 614. I WILL GRANT YOUR
09:12AM 5 REQUEST TO ADOPT THE OBJECTIONS MADE BY DEFENSE CO-COUNSEL--OR
09:12AM 6 COUNSEL FOR OTHER DEFENDANTS DURING THIS TRIAL SO THAT ALL OF
09:13AM 7 YOU DON'T HAVE TO STAND UP AND VOICE THE SAME OBJECTION EACH
09:13AM 8 TIME SOMETHING HAPPENS. I'LL LET EACH OF YOU ADOPT EACH
09:13AM 9 OTHER'S OBJECTIONS. AND YOU MAY ADOPT THE JURY INSTRUCTIONS
09:13AM 10 REQUESTED BY OTHER DEFENSE COUNSEL.

09:13AM 11 AS FAR AS PRETRIAL MOTIONS, I'M GOING TO DENY THAT.
09:13AM 12 I THINK IT GETS TOO CONFUSING, BECAUSE SOMETIMES A MOTION
09:13AM 13 DOESN'T NECESSARILY APPLY TO EACH AND EVERY DEFENDANT.

09:13AM 14 SO THAT'S MY RULING.

09:13AM 15 MS. SANFORD, I'M GRANTING THE MOTION, IN PART,
09:13AM 16 NUMBER 614--DOCUMENT 614, REGARDING OBJECTIONS AND JURY
09:13AM 17 INSTRUCTIONS, BUT NOT ON MOTIONS.

09:13AM 18 DEPUTY COURT CLERK: YES, SIR.

09:14AM 19 THE COURT: OKAY.

09:14AM 20 I THINK THOSE ARE ALL THE MOTIONS I HAVE FROM YOU,
09:14AM 21 MR. KEMP.

09:14AM 22 NEXT, DEFENDANT NUMBER 14, TIMOTHY LEDON BOWEN, I
09:14AM 23 HAVE MOTIONS THAT MR. WHALEN FILED. FIRST OF ALL, MR. WHALEN,
09:14AM 24 DID YOU GET MY ORDER THAT I SIGNED ON YOUR MOTION TO DISMISS ON
09:14AM 25 SPEEDY-TRIAL BASIS?

09:14AM 1 MR. WHALEN: I HAVE NOT SEEN THE ORDER. I DID SEE
09:14AM 2 THE NOTICE THIS MORNING AS I WAS TRAVELING HERE, BUT I HAVE NOT
09:14AM 3 SEEN THE WRITTEN ORDER.

09:14AM 4 THE COURT: OKAY. I'M DENYING MR. BOWEN'S MOTION TO
09:14AM 5 DISMISS FOR SPEEDY TRIAL.

09:14AM 6 ALSO, I SIGNED AN ORDER ON YOUR MOTIONS IN LIMINE.
09:14AM 7 THOSE WERE DOCKET ENTRIES 472 AND 623. HAVE YOU SEEN THAT
09:14AM 8 ORDER?

09:14AM 9 MR. WHALEN: MS. BATSON SHOWED IT TO ME BRIEFLY, BUT
09:15AM 10 I HAVE NOT SEEN IT--HAD A CHANCE TO DIGEST IT IN ITS ENTIRETY,
09:15AM 11 JUDGE.

09:15AM 12 THE COURT: IS IT DOCKETED YET, MS. SANFORD?

09:15AM 13 MR. WHALEN: IT IS DOCKETED, JUDGE. I SAW IT THIS
09:15AM 14 MORNING--I SAW THE NOTICE OF IT.

09:15AM 15 THE COURT: DO YOU WANT A COPY?

09:15AM 16 MR. WHALEN: YES, PLEASE.

09:15AM 17 THE COURT: MS. SANFORD, WOULD YOU PRINT MY ORDER ON
09:15AM 18 MR. WHALEN'S MOTIONS IN LIMINE AND ON HIS MOTIONS TO DISMISS.

09:15AM 19 DEPUTY COURT CLERK: YES.

09:15AM 20 THE COURT: OKAY.

09:15AM 21 WELL, ON YOUR MOTIONS IN LIMINE, THE GOVERNMENT HAS
09:15AM 22 FILED A 404(B) NOTICE ON MR. BOWEN, ANNOUNCING THAT IT WOULD
09:15AM 23 LIKE TO OFFER EVIDENCE OF MR. BOWEN'S PRIOR CONVICTION FOR
09:15AM 24 CONSPIRACY TO POSSESS WITH INTENT TO MANUFACTURE COCAINE BASE
09:15AM 25 IN 2001 AND PRIOR CONVICTION FOR DELIVERY OF COCAINE BASE IN

09:15AM 1 2002. THE FIRST CONVICTION WAS IN FEDERAL COURT, IN THIS
09:16AM 2 COURT; THE SECOND CONVICTION WAS IN STATE DISTRICT COURT IN
09:16AM 3 GRAYSON COUNTY. I HAVE DENIED YOUR MOTION IN LIMINE ON THOSE
09:16AM 4 BECAUSE IT APPEARS THAT THOSE TWO PRIOR CONVICTIONS WOULD MEET
09:16AM 5 THE REQUIREMENTS OF RULE 404(B). AGAIN, THESE ARE MOTIONS THAT
09:16AM 6 YOU FILED AT THE VERY LAST MINUTE. NO, NO, I'M SORRY. YOU
09:16AM 7 FILED THIS OCTOBER, YOU SURE DID. OKAY. SO I MADE A RULING
09:16AM 8 ON THAT.

09:16AM 9 AND THE REASON I FOUND THAT THAT EVIDENCE IS
09:17AM 10 ADMISSIBLE IS BECAUSE, UNDER THE BEECHUM TEST, I BELIEVE
09:17AM 11 EVIDENCE OF THOSE TWO PRIOR SIMILAR-ACT CONVICTIONS ARE
09:17AM 12 RELEVANT TO AN ISSUE OTHER THAN MR. BOWEN'S CHARACTER, THEY
09:17AM 13 ARE SIMILAR TO THE OFFENSE CHARGED--HE'S CHARGED HERE WITH
09:17AM 14 CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE METHAMPHETAMINE,
09:17AM 15 AND HE WAS EARLIER CONVICTED OF CONSPIRACY TO POSSESS WITH
09:17AM 16 INTENT TO DISTRIBUTE COCAINE BASE IN 2001 IN FEDERAL COURT,
09:17AM 17 AND CONVICTED FOR DELIVERY OF COCAINE BASE IN STATE COURT IN
09:17AM 18 2002. THE ENTRY OF A NOT-GUILTY PLEA IN A CONSPIRACY CASE
09:17AM 19 RAISES THE ISSUE OF INTENT SUFFICIENT TO JUSTIFY THE
09:18AM 20 ADMISSIBILITY OF EXTRINSIC OFFENSE EVIDENCE, AND THE INTENT IS
09:18AM 21 SIMILAR IN THE EXTRINSIC OFFENSE EVIDENCE AS IT IS IN THIS CASE
09:18AM 22 ON TRIAL. ALSO, THE EVIDENCE MUST POSSESS PROBATIVE VALUE NOT
09:18AM 23 SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.
09:18AM 24 THERE APPEARS TO BE CLEAR EVIDENCE OF THE PRIOR SIMILAR ACTS.

09:18AM 25 MR. GONZALEZ, I THINK YOU'VE GIVEN ME THE JUDGMENT

09:18AM 1 IN THE FEDERAL CASE AND YOU PROBABLY HAVE THE JUDGMENT IN THE
09:18AM 2 STATE CASE.

09:18AM 3 MR. GONZALEZ: YES, YOUR HONOR, WE DO.

09:18AM 4 THE COURT: THESE PRIOR CONVICTIONS ARE NOT TOO
09:18AM 5 REMOTE IN TIME. THEY OCCURRED IN 2001 AND 2002, ABOUT 11--
09:18AM 6 10 OR 11 YEARS AGO.

09:19AM 7 INTENT IS A MATERIAL ELEMENT IN BOTH THE CHARGE
09:19AM 8 THAT WE ARE ABOUT TO GO TO TRIAL ON AND IN THE PRIOR SIMILAR
09:19AM 9 OFFENSES.

09:19AM 10 AND, LET'S SEE, MR. GONZALEZ, IS YOUR EVIDENCE IN
09:19AM 11 THIS CASE BASED UPON COCONSPIRATOR TESTIMONY?

09:19AM 12 MR. GONZALEZ: YES, YOUR HONOR.

09:19AM 13 THE COURT: LARGELY?

09:19AM 14 MR. GONZALEZ: LARGELY.

09:19AM 15 THE COURT: DO YOU HAVE WIRETAPS?

09:19AM 16 MR. GONZALEZ: NO, YOUR HONOR.

09:19AM 17 THE COURT: IT SEEMED LIKE, TO ME, I SAW SOMETHING
09:19AM 18 ABOUT A RECORDING. WAS IT A VIDEO RECORDING?

09:19AM 19 MR. GONZALEZ: THAT APPLIES TO MR. VEGA, NOT TO
09:19AM 20 MR. BOWEN.

09:19AM 21 THE COURT: OKAY. ALL RIGHT.

09:19AM 22 THE COURT FINDS, THEN, THAT THE PRIOR SIMILAR-ACT
09:20AM 23 EVIDENCE IS SUBSTANTIALLY NEEDED BY THE GOVERNMENT, SINCE ITS
09:20AM 24 EVIDENCE OF A CONSPIRACY IS BASED ON COCONSPIRATOR TESTIMONY,
09:20AM 25 ALL OF WHICH IS SUBJECT TO ATTACK. SO I WILL ALLOW THE

09:20AM 1 GOVERNMENT TO OFFER THOSE TWO PRIOR SIMILAR CONVICTIONS.
09:20AM 2 HOWEVER, I'M GRANTING THE MOTION IN LIMINE ON THE MAY 5TH,
09:20AM 3 2012, TRAFFIC STOP AND SEARCH. AND THE REASON I'M DOING THAT
09:20AM 4 IS NOTICE--404(B) NOTICE OF THE MAY 5TH TRAFFIC STOP AND SEARCH
09:21AM 5 OF MR. BOWEN WAS NOT GIVEN BY THE GOVERNMENT TO MR. BOWEN UNTIL
09:21AM 6 NOVEMBER 30TH, 2012, WHICH WAS LAST FRIDAY.

09:21AM 7 IS THAT CORRECT, MR. WHALEN?

09:21AM 8 MR. WHALEN: YES, THAT'S CORRECT, YOUR HONOR.

09:21AM 9 THE COURT: OKAY. I THINK THAT'S RIGHT.

09:21AM 10 IS THAT NOT RIGHT, MR. GONZALEZ?

09:21AM 11 MR. GONZALEZ: FORMAL NOTICE WAS GIVEN ON THAT DATE,
09:21AM 12 YES, SIR.

09:21AM 13 THE COURT: OKAY. ALL RIGHT. BASED UPON THAT, I
09:21AM 14 THINK IN REACTION TO THAT, MR. WHALEN, YOU FILED A MOTION TO
09:21AM 15 SUPPRESS AND A MOTION FOR LEAVE TO FILE A MOTION TO SUPPRESS.

09:21AM 16 MR. WHALEN: THAT'S CORRECT, YOUR HONOR.

09:21AM 17 THE COURT: OKAY. I THINK THAT FILING THE 404(B)
09:21AM 18 NOTICE ON THE MAY 5TH, 2012, STOP AND SEARCH OF MR. BOWEN
09:21AM 19 IS UNTIMELY. IT WAS ONLY TWO BUSINESS DAYS BEFORE THIS JURY
09:22AM 20 SELECTION RIGHT NOW. AND IT IS 9:20 AND THE JURY IS WAITING.
09:22AM 21 THE COURT DOES NOT FEEL THAT THAT IS FAIR TO MR. BOWEN, AND THE
09:22AM 22 COURT CANNOT, AT THIS POINT, CONDUCT A SUPPRESSION HEARING ON
09:22AM 23 THE EVIDENCE SEIZED AT THAT MAY 5TH, 2012, STOP. SO THAT'S MY
09:22AM 24 RULING.

09:22AM 25 LET'S SEE. MR. WHALEN, I'M NOT SURE WHAT YOU MEANT

09:22AM 1 BY MOTION IN LIMINE NUMBER 2. I WAS GUESSING YOU MEANT
09:22AM 2 JENCKS ACT MATERIAL. DO YOU HAVE A COPY OF THE ORDER THERE?

09:22AM 3 MR. WHALEN: I DO, YOUR HONOR. AS FAR AS NUMBER 2,
09:22AM 4 IT WOULD BE ANY--

09:22AM 5 THE COURT: IF THERE'S ANY TESTIMONY IN OPEN COURT,
09:22AM 6 YOU ARE GOING TO HAVE THE RIGHT TO CROSS-EXAMINE THE WITNESS.

09:22AM 7 MR. WHALEN: RIGHT. I THINK WHAT I WAS GETTING
09:22AM 8 TO IS ANYBODY TRYING TO OFFER ANY TESTIMONY FOR SOMEBODY WHO
09:23AM 9 WASN'T AVAILABLE TO TESTIFY OR SUBJECT TO CROSS-EXAMINATION,
09:23AM 10 WHETHER IT BE HEARSAY STATEMENTS ON A VIDEO FROM A TRAFFIC
09:23AM 11 STOP, WHICH WAS GONNA BE POTENTIALLY THE CASE IN THE MAY 5TH
09:23AM 12 ARREST, OR ANY OTHER TYPE OF STATEMENT SOMEBODY ELSE MADE THAT
09:23AM 13 WE DON'T HAVE THE ABILITY TO CROSS-EXAMINE THEM ON. SO IT WAS
09:23AM 14 KIND OF MORE OF A CRAWFORD-ENCOMPASSING LIMINE THAT THERE'S NO
09:23AM 15 STATEMENT BEING OFFERED THAT WE DON'T HAVE THE OPPORTUNITY TO
09:23AM 16 CROSS- EXAMINE, YOUR HONOR.

09:23AM 17 THE COURT: OKAY.

09:23AM 18 WELL, MR. GONZALEZ, I'LL JUST ASK YOU NOT TO ELICIT
09:23AM 19 FROM WITNESSES HEARSAY TESTIMONY.

09:23AM 20 MR. GONZALEZ: YOUR HONOR, OUR INTENTION IS NOT TO
09:23AM 21 ELICIT HEARSAY; WE WOULD ONLY ELICIT STATEMENTS MADE BY PEOPLE
09:23AM 22 IF THEY WERE PRESENT, SUCH AS A COCONSPIRATOR, AS WELL AS MAYBE
09:23AM 23 THE CASE AGENT TESTIFYING THAT WITH THAT INFORMATION HE WOULD
09:23AM 24 USE THAT INFORMATION TO FURTHER HIS INVESTIGATION. THOSE ARE
09:24AM 25 THE TWO THAT COME UP THE MOST.

09:24AM 1 THE COURT: WELL, I DON'T KNOW ABOUT THE SECOND
09:24AM 2 ONE.

09:24AM 3 I MEAN, MR. WHALEN, YOU'LL JUST HAVE TO OBJECT.
09:24AM 4 BUT ANY ADMISSIONS BY YOUR CLIENT, MR. WHALEN, WOULD NOT BE
09:24AM 5 HEARSAY; ANY COCONSPIRATOR STATEMENTS, IF THEY QUALIFY, WOULD
09:24AM 6 NOT BE HEARSAY.

09:24AM 7 MR. WHALEN: AND I UNDERSTAND THAT. JUST OUT OF
09:24AM 8 AN ABUNDANCE OF CAUTION SOMETIMES WITNESSES CAN START TALKING
09:24AM 9 ABOUT, "WELL, SO-AND-SO TOLD ME," AND THAT TYPE OF THING.

09:24AM 10 THE COURT: YES. AND SOMETIMES THERE'S NO WAY TO
09:24AM 11 PREDICT WHEN THEY START DOING THAT.

09:24AM 12 MR. WHALEN: THAT'S CORRECT.

09:24AM 13 THE COURT: I JUST HAVE TO CAUTION THEM ON THAT.
09:24AM 14 OKAY.

09:24AM 15 AND THEN I GRANTED YOUR MOTION ON NOT OFFERING
09:24AM 16 EVIDENCE OF LAB RESULTS WITHOUT THE PROPER PREDICATE.

09:24AM 17 SO I'VE SIGNED AN ORDER ON YOUR TWO MOTIONS IN
09:24AM 18 LIMINE.

09:24AM 19 MR. GONZALEZ: YOUR HONOR, ON THE LAST ISSUE,
09:24AM 20 THE DRUGS AND THE LAB REPORTS, MAY WE INTRODUCE THOSE ITEMS
09:25AM 21 CONDITIONALLY UNTIL THE CHEMIST TESTIFIES? THAT WAY, THE CASE
09:25AM 22 AGENT CAN SAY THAT HE RECEIVED THAT LAB REPORT AS PART OF HIS
09:25AM 23 INVESTIGATION, WHICH IS TYPICAL OF ANY INVESTIGATOR. THE CASE
09:25AM 24 AGENT RECEIVES ALL THE LAB REPORTS. SO HE CAN IDENTIFY THEM.
09:25AM 25 BUT WE WOULDN'T INTRODUCE THEM FINALLY UNTIL THE CHEMIST

09:25AM 1 TESTIFIES.

09:25AM 2 THE COURT: I THINK WE'VE DONE THAT BEFORE.

09:25AM 3 MR. GONZALEZ: I BELIEVE SO. I JUST WANTED TO MAKE
09:25AM 4 SURE THAT THAT'S OKAY, DOING IT THAT WAY.

09:25AM 5 THE COURT: MR. WHALEN?

09:25AM 6 MR. WHALEN: IF THEY'RE NOT BEING PUBLISHED TO THE
09:25AM 7 JURY AND HE'S NOT TESTIFYING TO ULTIMATE RESULTS, THEN I DON'T
09:25AM 8 NECESSARILY HAVE A PROBLEM WITH THAT.

09:25AM 9 THE COURT: I'M NOT SURE HOW YOU'VE DONE IT IN THE
09:25AM 10 PAST, MR. GONZALEZ.

09:25AM 11 MR. GONZALEZ: IN THE PAST, WE HAVE PUBLISHED THEM
09:25AM 12 TO THE JURY SO THE JURY SEES THE DOCUMENT THAT THE CASE AGENT
09:25AM 13 IS TESTIFYING TO, BUT HE DOES NOT TESTIFY AS TO THE CONTENTS.
09:25AM 14 HE DOESN'T TESTIFY AS TO THE RESULTS, HE DOESN'T TESTIFY AS
09:25AM 15 TO THE TESTS; HE JUST TESTIFIES, "THIS IS THE DOCUMENT," IT'S
09:25AM 16 ADMITTED CONDITIONALLY, IT'S SHOWN TO THE JURY, AND THAT'S ALL.

09:25AM 17 THE COURT: BUT THE JURY SEES THE QUANTITY AND THE
09:26AM 18 RESULTS?

09:26AM 19 MR. GONZALEZ: RIGHT.

09:26AM 20 THE COURT: AND THEN YOU CALL THE CHEMIST LATER TO
09:26AM 21 PROVE IT UP?

09:26AM 22 MR. GONZALEZ: YES, SIR.

09:26AM 23 THE COURT: YOU KNOW, I DON'T SEE ANY HARM IN THAT,
09:26AM 24 AS LONG AS THE GOVERNMENT ASSURES ME THAT THEY WILL, IN FACT,
09:26AM 25 HAVE THE EVIDENCE TO PROVE THE PREDICATE NECESSARY.

09:26AM 1 MR. WHALEN: WELL, YOUR HONOR--

09:26AM 2 THE COURT: UNLESS YOU ARE JUST OBJECTING TO THE
09:26AM 3 WHOLE DOCUMENT.

09:26AM 4 MR. WHALEN: WELL, I WOULD OBJECT TO IT BEING
09:26AM 5 PUBLISHED UNTIL THEY HAVE ESTABLISHED THAT--YOU KNOW, THE
09:26AM 6 CHEMIST CAN TESTIFY THAT IT IS WHAT IT TESTED OUT TO BE.
09:26AM 7 BECAUSE I THINK MY CONCERN WOULD BE THAT IF YOU SHOW IT TO
09:26AM 8 A JURY THAT THERE'S A LAB RESULT AND THEN LATER ON FOR SOME
09:26AM 9 REASON, WHETHER IT'S SCHEDULING OR SOME ISSUE COMES UP THAT
09:26AM 10 THEY CAN'T PRODUCE THIS CHEMIST, THEN NOW YOU HAVE A LAB
09:26AM 11 REPORT THAT WAS PUBLISHED, EVEN THOUGH IT'S NOT NOW ADMITTED--

09:26AM 12 THE COURT: I WOULD HAVE TO INSTRUCT THE JURY TO
09:26AM 13 DISREGARD THAT.

09:26AM 14 MR. WHALEN: AND WE WOULD REQUEST THAT. BUT I JUST
09:26AM 15 THINK, RATHER THAN HAVING TO ENTERTAIN THAT INSTRUCTION AND
09:26AM 16 HAVE THEM "FORGET WHAT YOU SAW," TO ME, THE BETTER COURSE IS
09:27AM 17 TO NOT PUBLISH IT TO THE JURY, LET THE CHEMIST PROVE IT UP,
09:27AM 18 AND THEN PUBLISH IT THROUGH THE CHEMIST.

09:27AM 19 MR. GONZALEZ: YOUR HONOR, I CAN REPRESENT TO THE
09:27AM 20 COURT THAT EACH OF THE CHEMISTS HAVE BEEN SUBPOENAED AND HAVE
09:27AM 21 INDICATED THAT THEY WILL BE HERE.

09:27AM 22 THE COURT: OKAY.

09:27AM 23 I'LL LET MR. GONZALEZ ASK QUESTIONS ABOUT THE DRUGS--
09:27AM 24 ASK THOSE QUESTIONS OF THE OFFICERS OR THE INVESTIGATING AGENTS
09:27AM 25 WITH THE UNDERSTANDING THAT MR. GONZALEZ WILL PROVE THE

09:27AM 1 UNDERLYING PREDICATE AT A LATER TIME.

09:27AM 2 MR. WHALEN: AND, YOUR HONOR, JUST FOR RECORD
09:27AM 3 PURPOSES, CAN I HAVE--JUST STATE ON THE RECORD I HAVE AN
09:27AM 4 OBJECTION TO THAT? AND AM I REQUIRED TO RENEW THAT OBJECTION
09:27AM 5 EACH AND EVERY TIME THEY PUBLISH THAT DOCUMENT?

09:27AM 6 THE COURT: NOT AS FAR AS I'M CONCERNED.

09:27AM 7 MR. WHALEN: OKAY.

09:27AM 8 THE COURT: NOW, ON YOUR MOTION FOR LEAVE TO FILE A
09:27AM 9 MOTION TO SUPPRESS AND YOUR MOTION TO SUPPRESS--AND THOSE ARE
09:27AM 10 DOCUMENTS 621 AND 622, FILED YESTERDAY--THOSE ARE EFFECTIVELY
09:28AM 11 MOOTED BY MY ORDER ON YOUR MOTIONS IN LIMINE REGARDING THE
09:28AM 12 MAY 5TH, 2012, STOP AND SEARCH OF MR. BOWEN. THEREFORE,
09:28AM 13 MR. WHALEN, I'M GOING TO DENY THE MOTION FOR LEAVE TO FILE
09:28AM 14 A MOTION TO SUPPRESS AND THE MOTION TO SUPPRESS, DOCUMENTS 621
09:28AM 15 AND 622, AS MOOT.

09:28AM 16 MR. WHALEN: THAT'S FINE.

09:28AM 17 THE COURT: OKAY.

09:28AM 18 FINALLY, YOU FILED A MOTION TO DISMISS DUE TO LACK
09:28AM 19 OF JURISDICTION. THAT WAS FILED YESTERDAY, DECEMBER 3RD. YOU
09:28AM 20 KNOW, MR. WHALEN, JUST FOR THE FUTURE, YOU STATE IN YOUR MOTION
09:28AM 21 THAT THESE ALLEGED CRIMINAL ACTS OCCURRED IN THE CITIES OF
09:28AM 22 GRAND PRAIRIE, DALLAS, DUNCANVILLE, SHERMAN AND DENISON, WITHIN
09:29AM 23 THE JURISDICTION OF THE STATE OF TEXAS, AND THERE'S NO FEDERAL
09:29AM 24 JURISDICTION. AND YOU STATE ON PAGE 4 THAT YOU WERE INSTRUCTED
09:29AM 25 BY YOUR CLIENT TO FILE THIS MOTION. I DON'T THINK COUNSEL HAS

09:29AM 1 A RESPONSIBILITY TO FILE FRIVOLOUS MOTIONS.

09:29AM 2 MR. WHALEN: I UNDERSTAND THAT. I THINK THE CONCERN
09:29AM 3 IS THAT WHEN YOU REPRESENT--YOU KNOW, UNDER THE REPRESENTATION,
09:29AM 4 IN THE VIEW OF MEETING THE CLIENT'S NEEDS AND THEN ALSO LOOKING
09:29AM 5 AT 2255 ISSUES LATER ON WHEN WE'RE IN A CJA POSITION, I THINK
09:29AM 6 IT'S ALWAYS A DIFFICULT POSITION TO BE IN, JUDGE.

09:29AM 7 THE COURT: I UNDERSTAND. I KNOW THAT'S WHY YOU
09:29AM 8 FILED IT. BUT I'M JUST SAYING THAT I DON'T THINK EVEN CJA
09:29AM 9 COUNSEL OR ANY COUNSEL IS REQUIRED TO FILE FRIVOLOUS MOTIONS
09:29AM 10 THAT TAKE UP THE COURT'S TIME JUST BECAUSE THE DEFENDANT
09:29AM 11 REQUESTS IT.

09:29AM 12 SO, ANYWAY, FOR THE RECORD, DOCUMENT NUMBER 624,
09:29AM 13 THE MOTION TO DISMISS DUE TO LACK OF JURISDICTION, IS DENIED.
09:30AM 14 AND THE COURT FINDS THIS MOTION TO BE WITHOUT ANY MERIT.

09:30AM 15 OKAY. THAT TAKES CARE OF THE MOTIONS THAT I HAVE
09:30AM 16 LOOKED AT FROM MR. BOWEN.

09:30AM 17 MR. WHALEN: AND THERE MAY BE ONE THAT YOU DID NOT
09:30AM 18 GET, YOUR HONOR, WHICH WAS A MOTION TO SEVER. AND PART OF THE
09:30AM 19 REASON THAT WAS FILED WAS THAT MR. BOWEN HAD REQUESTED THAT I
09:30AM 20 DISCUSS WITH MR. GONZALEZ THE ISSUE OF HAVING A BENCH TRIAL
09:30AM 21 VERSUS A JURY TRIAL. AND, OBVIOUSLY, IF WE HAD--IF HE
09:30AM 22 CONSENTED TO THAT, THEN WE WOULD HAVE ASKED TO HAVE BEEN
09:30AM 23 SEVERED, YOU KNOW, OBVIOUSLY, FROM THE JURY TRIAL. BUT
09:30AM 24 THEY DID NOT CONSENT TO THE REQUEST FOR A NONJURY TRIAL.

09:30AM 25 THE COURT: TODAY? A NONJURY TRIAL?

09:31AM 1 MR. WHALEN: MR. BOWEN HAD REQUESTED A NONJURY
09:31AM 2 TRIAL. I ASKED MR. GONZALEZ OVER THE WEEKEND WHETHER OR
09:31AM 3 NOT HE WOULD CONSENT TO THAT, AND HE WOULD NOT CONSENT TO IT.

09:31AM 4 THE COURT: HE DID NOT?

09:31AM 5 MR. WHALEN: HE WOULD NOT.

09:31AM 6 THE COURT: YOU MUST HAVE FILED THESE MOTIONS LAST
09:31AM 7 NIGHT. I HAVE DOCUMENT NUMBER 651, MOTION TO SEVER COUNTS; I
09:31AM 8 HAVE DOCUMENT 654, REQUEST FOR SPECIFIC VOIR DIRE QUESTIONS,
09:31AM 9 LOOKS LIKE IT'S SIX PAGES...

09:31AM 10 MR. WHALEN: AND THEN I FILED THE MOTION OR THE
09:31AM 11 REQUEST FOR JURY INSTRUCTIONS BASED ON--AFTER REVIEWING THE
09:31AM 12 GOVERNMENT'S INSTRUCTIONS, I SIMPLY ASKED FOR ADDITIONAL
09:31AM 13 INSTRUCTIONS THAT WE COULD TAKE UP LATER, YOUR HONOR.

09:31AM 14 THE COURT: OKAY.

09:31AM 15 MR. WHALEN: AND THEN, ALSO, THERE WAS THE RESPONSE
09:31AM 16 TO THE SENTENCING ENHANCEMENT THAT NEEDED TO BE FILED PRIOR TO
09:31AM 17 TRIAL. OBVIOUSLY, THAT'S A SENTENCING ISSUE, IF WE GET THERE.
09:31AM 18 BUT I KNEW UNDER 851 IT NEEDED TO BE FILED PRIOR TO TRIAL IN
09:32AM 19 ORDER TO HAVE A FULL HEARING ON THAT. SO THAT WAS MY RESPONSE
09:32AM 20 TO THE SENTENCING ENHANCEMENT.

09:32AM 21 THE COURT: OKAY. THE MOTION TO SEVER COUNTS IS
09:32AM 22 DENIED AS UNTIMELY.

09:32AM 23 THE REQUEST FOR SPECIFIC VOIR DIRE QUESTIONS,
09:32AM 24 MR. WHALEN, YOU'LL JUST HAVE TO ASK WHATEVER QUESTIONS
09:32AM 25 YOU HAVE. I DON'T HAVE TIME TO GO THROUGH THESE NOW.

09:32AM 1 MR. WHALEN: OKAY. THAT'S FINE, YOUR HONOR.

09:32AM 2 THE COURT: YOU FILED A MEMORANDUM OF POINTS AND
09:32AM 3 AUTHORITIES IN SUPPORT OF YOUR MOTION IN LIMINE TO PRECLUDE
09:32AM 4 ADMISSION OF COCONSPIRATOR STATEMENTS. THAT'S DOCUMENT NUMBER
09:32AM 5 658. AGAIN, I JUST GOT THAT THIS MORNING. IT IS NOW TIME
09:33AM 6 TO PICK THE JURY. I DO NOT HAVE TIME TO GO THROUGH THAT.

09:33AM 7 MR. WHALEN: AND THAT WAS SIMPLY, YOU KNOW,
09:33AM 8 REQUESTING A HEARING--KIND OF LIKE THE MOTION IN LIMINE--
09:33AM 9 TO HAVE A JAMES HEARING, WHICH YOU HAVE STATED YOU ARE
09:33AM 10 GOING TO CARRY THAT MOTION IN LIMINE WITH THE TRIAL, YOUR
09:33AM 11 HONOR.

09:33AM 12 THE COURT: AND THEN THERE'S YOUR RESPONSE TO THE
09:33AM 13 GOVERNMENT'S 404(B) NOTICE. I'VE ALREADY MADE A RULING ON
09:33AM 14 THAT.

09:33AM 15 MR. WHALEN: AND, YOUR HONOR, WITH REGARDS TO THE
09:33AM 16 404(B) ISSUE, OBVIOUSLY, WE WOULD OBJECT TO THOSE TWO PRIOR
09:33AM 17 CONVICTIONS COMING INTO EVIDENCE. DO I NEED TO OBJECT EACH
09:33AM 18 AND EVERY TIME, OR CAN WE HAVE A RUNNING OBJECTION TO THAT?

09:33AM 19 THE COURT: YOU CAN HAVE A RUNNING OBJECTION.

09:33AM 20 MR. WHALEN: OKAY. AND I WON'T NEED TO RENEW THAT
09:33AM 21 WHEN THAT TESTIMONY COMES IN?

09:33AM 22 THE COURT: NO.

09:33AM 23 MR. WHALEN: OKAY.

09:33AM 24 ALSO, OBVIOUSLY, I KNOW THE COURT WOULD, BUT WE
09:33AM 25 WOULD REQUEST THE LIMITING INSTRUCTION WHEN THAT TESTIMONY IS

09:33AM 1 BEING PROFFERED, YOUR HONOR.

09:33AM 2 THE COURT: OKAY. YES.

09:33AM 3 I THINK THAT TAKES CARE OF YOUR MOTIONS.

09:33AM 4 MR. WHALEN: YES, SIR.

09:33AM 5 THE COURT: OKAY.

09:34AM 6 FINALLY--LET'S SEE. I HAVE A MOTION BY THE
09:34AM 7 GOVERNMENT, REQUESTING THAT MR. VEGA BE DIRECTED TO GIVE
09:34AM 8 FINGERPRINTS AND PALMPRINTS TO THE GOVERNMENT.

09:34AM 9 MR. PETRAZIO, IS THERE ANYTHING YOU WANT TO SAY ON
09:34AM 10 THAT? THIS WAS FILED LAST FRIDAY.

09:34AM 11 MR. PETRAZIO: YOUR HONOR, OBVIOUSLY, I WAS CONTACTED
09:34AM 12 WITH REGARD TO MY POSITION, AND I OBJECTED TO IT.

09:34AM 13 THE COURT: WELL, I THINK TAKING FINGERPRINTS DOES
09:34AM 14 NOT VIOLATE ANY OF THE DEFENDANT'S RIGHTS.

09:34AM 15 MR. PETRAZIO: I UNDERSTAND, YOUR HONOR.

09:34AM 16 THE COURT: THAT'S ESTABLISHED LAW.

09:34AM 17 MR. PETRAZIO: I UNDERSTAND.

09:34AM 18 THE COURT: SO I'M GOING TO GRANT THE GOVERNMENT'S
09:34AM 19 MOTION.

09:34AM 20 MR. PETRAZIO: YES, YOUR HONOR.

09:34AM 21 THE COURT: SO DOCUMENT 581, WHICH IS THE
09:35AM 22 GOVERNMENT'S MOTION FOR AN ORDER DIRECTING THE DEFENDANT
09:35AM 23 TO SUBMIT FINGERPRINT AND PALMPRINT SAMPLES, IS GRANTED.

09:35AM 24 MR. GONZALEZ, YOU'LL JUST NEED TO GET WITH THE
09:35AM 25 MARSHAL AND HAVE YOUR AGENT OR OFFICER GO BACK AND TAKE THE

09:35AM 1 PRINTS AT SOME POINT.

09:35AM 2 MR. GONZALEZ: YES, YOUR HONOR. WE'LL HAVE SOMEONE
09:35AM 3 COME IN AND TAKE THE PRINTS.

09:35AM 4 THE COURT: OKAY.

09:35AM 5 WHEN YOU SAY, IN THE SECOND PARAGRAPH OF THAT MOTION,
09:35AM 6 MR. GONZALEZ, "TO COMPARE IT WITH EVIDENCE SEIZED AT BRITON,"
09:35AM 7 WHAT IS BRITON? IS THAT A STREET OR SOMETHING?

09:35AM 8 MR. GONZALEZ: YES, YOUR HONOR. THAT IS A HOUSE
09:35AM 9 THAT THE DEFENDANT WENT TO ON OCCASION, AND THERE WERE SOME
09:36AM 10 ITEMS THAT WERE LOCATED AT THAT HOUSE THAT HAD PALMPRINTS
09:36AM 11 AND FINGERPRINTS. WE WOULD LIKE TO COMPARE HIS PALMPRINTS AND
09:36AM 12 FINGERPRINTS TO THE EVIDENCE THAT WAS SEIZED AT THAT LOCATION.

09:36AM 13 THE COURT: OKAY.

09:36AM 14 LET'S SEE IF THERE'S ANYTHING ELSE. I DON'T THINK
09:36AM 15 SO.

09:36AM 16 MR. GONZALEZ, ARE YOU READY TO BRING IN THE JURY?

09:36AM 17 MR. GONZALEZ: YES, YOUR HONOR.

09:36AM 18 MR. PETRAZIO: YOUR HONOR, CAN I HAVE ONE MINUTE TO
09:36AM 19 STEP OUT IN THE HALL?

09:36AM 20 THE COURT: SURE.

09:36AM 21 MR. PETRAZIO: THANK YOU, YOUR HONOR.

09:36AM 22 THE COURT: ALL RIGHT. LET'S SEE. WAIT JUST A
09:36AM 23 MOMENT.

09:36AM 24 MR. WHALEN, DID YOU WANT TO SAY SOMETHING?

09:36AM 25 MR. WHALEN: YES, YOUR HONOR. WE HAD AN INFORMAL

VOIR DIRE EXAMINATION BY THE COURT

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09:37AM 1 DISCUSSION ON FRIDAY, BUT IS THE COURT GOING TO ENTERTAIN ANY
09:37AM 2 ADDITIONAL STRIKES FOR JURY SELECTION, SINCE THERE'S THREE
09:37AM 3 CODEFENDANTS?

09:37AM 4 THE COURT: I DON'T KNOW. YOU DIDN'T FILE A MOTION.
09:37AM 5 I HAVE 48 PEOPLE. ORDINARILY YOU WOULD HAVE, COLLECTIVELY,
09:37AM 6 10 STRIKES, THE GOVERNMENT SIX. THERE ARE 16. WE NEED 28.
09:37AM 7 WE NEED ALTERNATES. 29, 30, 31, 32. WE NEED 32. WE'VE GOT
09:37AM 8 48. I THINK I'M GOING TO HAVE TO SEE HOW MANY PEOPLE WE HAVE
09:37AM 9 AFTER WE VOIR DIRE THEM.

09:37AM 10 MR. WHALEN: OKAY.

09:37AM 11 THE COURT: AND THEN, IF YOU WILL REMIND ME, IF WE
09:37AM 12 HAVE ENOUGH, THEN WE CAN CERTAINLY TALK ABOUT THAT.

09:37AM 13 MR. WHALEN: OKAY. I WILL, YOUR HONOR.

09:37AM 14 THE COURT: COUNSEL FOR THE DEFENDANTS, IS EVERYBODY
09:40AM 15 READY? EVERYBODY IS READY?

09:40AM 16 OKAY, MS. SANFORD.

09:40AM 17 [OPEN COURT, DEFENDANTS AND VENIRE PRESENT]

09:41AM 18 THE COURT: ALL RIGHT. YOU MAY BE SEATED.

09:41AM 19 VOIR DIRE EXAMINATION BY THE COURT

09:42AM 20 THE COURT: LADIES AND GENTLEMEN, GOOD MORNING TO
09:42AM 21 YOU. MY NAME IS RICHARD SCHELL. I WANT TO WELCOME ALL OF YOU
09:42AM 22 HERE TO THE FEDERAL COURTHOUSE. THANK YOU FOR BEING HERE TODAY
09:42AM 23 FOR JURY SELECTION. WE'RE GOING TO SELECT A JURY TO HEAR A
09:42AM 24 CRIMINAL CASE.

09:42AM 25 I'LL INTRODUCE TO YOU THE LAWYERS AND THE OTHERS WHO

VOIR DIRE EXAMINATION BY THE COURT

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09:42AM 1 ARE SEATED AT COUNSEL TABLE IN JUST A MOMENT, BUT LET ME TELL
09:42AM 2 YOU, FIRST OF ALL, THAT WE ANTICIPATE THIS TRIAL WILL TAKE
09:42AM 3 ABOUT A WEEK AND A HALF, PROBABLY AROUND SEVEN TRIAL DAYS.
09:42AM 4 THAT'S THE BEST ESTIMATE THAT I CAN GIVE YOU. SO, IF YOU ARE
09:42AM 5 CHOSEN ON THIS JURY, YOU SHOULD PLAN TO BE HERE THE REST OF
09:42AM 6 THIS WEEK AND PROBABLY THE FIRST THREE DAYS OF NEXT WEEK. THE
09:42AM 7 CASE COULD TAKE LONGER THAN THAT, BUT THAT'S THE BEST ESTIMATE
09:42AM 8 THAT I CAN GIVE YOU.

09:42AM 9 SO, SINCE THIS IS A CRIMINAL CASE, WE'LL SELECT A
09:42AM 10 JURY OF 12 TO HEAR AND DECIDE THE CASE. WE WILL ALSO SELECT
09:42AM 11 TWO ALTERNATE JURORS. SO THERE WILL BE A TOTAL OF 14 OF YOU
09:43AM 12 WHO WILL ACTUALLY BE CHOSEN. THE ALTERNATE JURORS WILL LISTEN
09:43AM 13 TO THE EVIDENCE, WILL PARTICIPATE COMPLETELY IN THE TRIAL UP
09:43AM 14 UNTIL THE TIME THAT THE LAWYERS MAKE THEIR FINAL ARGUMENTS
09:43AM 15 AND THE JURY IS ABOUT TO RETIRE TO THE JURY ROOM TO BEGIN
09:43AM 16 DELIBERATIONS. IF AT THAT TIME ALL OF THE FIRST 12 JURORS
09:43AM 17 ARE READY TO DELIBERATE, THEN I'LL EXCUSE THE TWO ALTERNATES.
09:43AM 18 IF DURING THE COURSE OF THE TRIAL ANY OF THE FIRST 12 JURORS
09:43AM 19 SHOULD HAVE TO BE EXCUSED, THEN THE ALTERNATES WILL BE SEATED
09:43AM 20 IN THE PLACE OF THE JURORS WHO HAD TO BE EXCUSED. SOMETIMES
09:43AM 21 SOMEONE GETS SICK OR HAS SOME REASON THAT THEY HAVE TO BE
09:43AM 22 EXCUSED, AND THAT'S WHY WE NEED ALTERNATE JURORS. WITH
09:43AM 23 ALTERNATE JURORS, WE CAN CONTINUE THE TRIAL AND WE DO NOT NEED
09:44AM 24 TO START ALL OVER WITH NEW JURY SELECTION AND PRESENTATION OF
09:44AM 25 THE EVIDENCE FROM THE BEGINNING.

VOIR DIRE EXAMINATION BY THE COURT

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09:44AM 1 ALL RIGHT. LET ME INTRODUCE TO YOU THE PEOPLE WHO
09:44AM 2 ARE SEATED AT COUNSEL TABLE HERE. THIS IS A CRIMINAL CASE.
09:44AM 3 IN FEDERAL COURT, THE ENTITY BRINGING THE CHARGES IS THE UNITED
09:44AM 4 STATES. THE UNITED STATES IS REPRESENTED BY ITS ASSISTANT U.S.
09:44AM 5 ATTORNEYS. AND IN THIS CASE, THE ASSISTANT U.S. ATTORNEYS
09:44AM 6 REPRESENTING THE GOVERNMENT ARE ERNEST GONZALEZ AND TRACEY
09:44AM 7 BATSON.

09:44AM 8 MR. GONZALEZ: GOOD MORNING.

09:44AM 9 MS. BATSON: GOOD MORNING.

09:44AM 10 THE COURT: THANK YOU, MR. GONZALEZ AND MS. BATSON.

09:44AM 11 THEY ARE JOINED AT GOVERNMENT'S COUNSEL TABLE BY
09:44AM 12 GARIN REETZ OF THE U.S. ATTORNEY'S OFFICE. HE IS IN LITIGATION
09:44AM 13 SUPPORT IN THE U.S. ATTORNEY'S OFFICE. THANK YOU, MR. REETZ.

09:44AM 14 AND ALSO SEATED WITH MR. GONZALEZ, MS. BATSON
09:45AM 15 AND MR. REETZ ARE TWO LAW ENFORCEMENT OFFICERS WHO WILL BE
09:45AM 16 ASSISTING MR. GONZALEZ AND MS. BATSON IN THE PRESENTATION OF
09:45AM 17 THE EVIDENCE. THEY ARE SPECIAL AGENT JOE MATA OF THE DRUG
09:45AM 18 ENFORCEMENT AGENCY--

09:45AM 19 SPECIAL AGENT MATA: GOOD MORNING.

09:45AM 20 THE COURT: --AND DETECTIVE BRIAN MCCLARAN OF THE
09:45AM 21 SHERMAN POLICE DEPARTMENT.

09:45AM 22 Q. NOW LET ME ASK YOU: DO ANY OF YOU BY ANY CHANCE KNOW
09:45AM 23 MR. GONZALEZ OR MS. BATSON OR MR. REETZ IN THE U.S. ATTORNEY'S
09:45AM 24 OFFICE HERE IN PLANO?

09:45AM 25 DO ANY OF YOU KNOW ANY OF THE OTHER LAWYERS OR

VOIR DIRE EXAMINATION BY THE COURT

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09:45AM 1 SUPPORT STAFF IN THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN
09:45AM 2 DISTRICT OF TEXAS? THERE ARE OFFICES IN PLANO AND SHERMAN AS
09:45AM 3 WELL AS OTHER LOCATIONS THROUGHOUT EAST TEXAS, SUCH AS TYLER
09:45AM 4 AND BEAUMONT AND TEXARKANA.

09:45AM 5 HAVE ANY OF YOU EVER HAD ANY DEALINGS WITH THE U.S.
09:46AM 6 ATTORNEY'S OFFICE? WHETHER THE U.S. ATTORNEY FOR THE EASTERN
09:46AM 7 DISTRICT OF TEXAS OR ANY OTHER DISTRICT, HAS ANYONE HAD ANY
09:46AM 8 DEALINGS WITH THE U.S. ATTORNEY'S OFFICE FOR ANY PURPOSE?

09:46AM 9 OKAY. COULD WE GET A MICROPHONE TO THIS JUROR BACK
09:46AM 10 HERE.

09:46AM 11 LADIES AND GENTLEMEN, I'M GOING TO REFER TO YOU BY
09:46AM 12 NUMBERS. EACH OF YOU HAS A NUMBER. SO IF YOU WILL STAND WHEN
09:46AM 13 YOU SPEAK AND USE THE MICROPHONE AND SHOW ME YOUR NUMBER.

09:46AM 14 OKAY. JUROR NUMBER 19. YES, SIR.

09:46AM 15 A. REMIND ME. THE U.S. ATTORNEY'S OFFICE IS PART OF THE
09:46AM 16 DEPARTMENT OF JUSTICE?

09:46AM 17 Q. YES.

09:46AM 18 A. I'VE HAD DEALINGS WITH THE DEPARTMENT OF JUSTICE.

09:46AM 19 Q. OKAY. WAS THAT THROUGH THE U.S. ATTORNEY'S OFFICE FOR
09:46AM 20 THE EASTERN DISTRICT OF TEXAS, OR SOME OTHER U.S. ATTORNEY'S
09:46AM 21 OFFICE, OR JUST DIRECTLY WITH THE DEPARTMENT OF JUSTICE?

09:46AM 22 A. IT WAS WITH A DISTRICT UP IN WASHINGTON, D.C. ME AS
09:46AM 23 AN OFFICER OF A COMPANY THAT THE DEPARTMENT OF JUSTICE HAD
09:47AM 24 BROUGHT A LAWSUIT AGAINST.

09:47AM 25 Q. ALL RIGHT. TELL ME, IS THERE ANYTHING ABOUT YOUR

VOIR DIRE EXAMINATION BY THE COURT

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09:47AM 1 EXPERIENCE WITH THE DEPARTMENT OF JUSTICE AND YOUR DEALINGS
09:47AM 2 WITH THEM THAT WOULD AFFECT YOUR FEELINGS ABOUT THIS CASE?

09:47AM 3 A. MOST LIKELY NOT.

09:47AM 4 Q. OKAY. HAVE YOU CONCLUDED WHATEVER DEALINGS YOU HAVE
09:47AM 5 OR HAD WITH THE DEPARTMENT OF JUSTICE?

09:47AM 6 A. YES, SIR.

09:47AM 7 Q. AND HOW LONG AGO WAS THAT?

09:47AM 8 A. JUNE 29TH OF 2012.

09:47AM 9 Q. OKAY. DID YOU FEEL--LET'S SEE. I'LL TELL YOU WHAT.
09:47AM 10 LET ME MAKE A NOTE AND I'LL COME BACK TO YOU AT A LATER TIME.
09:47AM 11 THANK YOU.

09:48AM 12 IS THERE ANYONE ELSE WHO HAS HAD ANY DEALINGS WITH
09:48AM 13 THE DEPARTMENT OF JUSTICE OR WITH ANY U.S. ATTORNEY'S OFFICE?
09:48AM 14 OKAY.

09:48AM 15 DO ANY OF YOU KNOW--AND I ASSUME NONE OF YOU KNOW
09:48AM 16 MR. GONZALEZ OR MS. BATSON. IS THAT CORRECT?

09:48AM 17 DO ANY OF YOU KNOW MR. REETZ?

09:48AM 18 DO ANY OF YOU KNOW SPECIAL AGENT JOE MATA WITH DEA?

09:48AM 19 DO ANY OF YOU KNOW ANY OF THE OTHER DEA AGENTS OR
09:48AM 20 STAFF?

09:48AM 21 HAVE YOU HAD ANY DEALINGS WITH DEA FOR ANY PURPOSE?

09:48AM 22 DO ANY OF YOU KNOW DETECTIVE BRIAN MCCLARAN WITH THE
09:48AM 23 SHERMAN POLICE DEPARTMENT?

09:48AM 24 DO ANY OF YOU KNOW OR ARE YOU FRIENDS WITH ANY OF
09:48AM 25 THE OFFICERS OR EMPLOYEES OF THE SHERMAN POLICE DEPARTMENT?

VOIR DIRE EXAMINATION BY THE COURT

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09:48AM 1 ANYBODY? OKAY.

09:49AM 2 LET ME INTRODUCE THE PEOPLE WHO ARE SEATED OVER HERE
09:49AM 3 AT DEFENSE COUNSEL TABLE. THERE ARE THREE DEFENDANTS WHO ARE
09:49AM 4 PROCEEDING TO TRIAL IN THIS CASE, AND THEY ARE, FIRST OF ALL,
09:49AM 5 RENE CORTEZ SALAZAR. MR. SALAZAR, COULD YOU STAND UP, PLEASE.
09:49AM 6 AND HIS LAWYER, KYLE KEMP.

09:49AM 7 MR. KEMP: GOOD MORNING.

09:49AM 8 THE COURT: OKAY. THANK YOU.

09:49AM 9 Q. DO ANY OF YOU KNOW MR. SALAZAR OR MR. KEMP? MR. KEMP'S
09:49AM 10 OFFICES ARE IN GAINESVILLE, TEXAS. HAVE ANY OF YOU EVER
09:49AM 11 EMPLOYED MR. KEMP FOR LEGAL SERVICES? OKAY. ALL RIGHT.

09:49AM 12 ALSO PROCEEDING TO TRIAL IS TIMOTHY LEDON BOWEN.
09:49AM 13 MR. BOWEN, IF YOU WILL PLEASE STAND. THIS IS MR. BOWEN IN
09:49AM 14 THE KHAKI-COLORED SHIRT. AND HIS LAWYER, JAMES WHALEN.

09:50AM 15 MR. WHALEN: GOOD MORNING.

09:50AM 16 THE COURT: ALL RIGHT. THANK YOU.

09:50AM 17 DO ANY OF YOU KNOW MR. BOWEN?

09:50AM 18 DO ANY OF YOU KNOW MR. WHALEN? MR. WHALEN'S LAW
09:50AM 19 OFFICES ARE HERE IN PLANO. HAVE ANY OF YOU EVER EMPLOYED
09:50AM 20 MR. WHALEN FOR LEGAL SERVICES? OKAY.

09:50AM 21 AND, FINALLY, LET ME INTRODUCE TO YOU JUAN CARLOS
09:50AM 22 VEGA AND HIS LAWYER, JOEL PETRAZIO.

09:50AM 23 MR. PETRAZIO: GOOD MORNING.

09:50AM 24 THE COURT: THANK YOU, MR. PETRAZIO AND MR. VEGA.

09:50AM 25 MR. VEGA HAS THE HEADPHONES ON. MR. VEGA SPEAKS

VOIR DIRE EXAMINATION BY THE COURT

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09:50AM 1 SPANISH, AND WE HAVE TWO SPANISH-LANGUAGE INTERPRETERS, ONE OF
09:50AM 2 WHOM IS HERE IN THE COURTROOM, MS. ADRIANO. YOU'LL ALSO SEE,
09:50AM 3 DURING THE COURSE OF THE MORNING, MR. MIKE MAHLER, WHO WILL
09:50AM 4 COME IN AND HELP MS. ADRIANO WITH SPANISH INTERPRETATION.

09:50AM 5 Q. DO ANY OF YOU KNOW JUAN CARLOS VEGA? OKAY.

09:51AM 6 DO ANY OF YOU KNOW JOEL PETRAZIO? MR. PETRAZIO'S
09:51AM 7 LAW OFFICES ARE HERE IN PLANO ALSO. HAVE ANY OF YOU EVER
09:51AM 8 EMPLOYED MR. PETRAZIO FOR LEGAL SERVICES? OKAY.

09:51AM 9 LET ME TELL YOU WHAT MR. SALAZAR, MR. BOWEN AND
09:51AM 10 MR. VEGA ARE ACCUSED OF IN THE INDICTMENT. THE ALLEGATION IN
09:51AM 11 THE INDICTMENT IS THAT FROM SOMETIME IN OR ABOUT JANUARY OF
09:51AM 12 2008 AND CONTINUOUSLY THEREAFTER UP TO AND INCLUDING APRIL 12TH
09:51AM 13 OF 2012, IT IS ALLEGED THAT RENE CORTEZ SALAZAR, TIMOTHY LEDON
09:51AM 14 BOWEN, JUAN CARLOS VEGA AND OTHERS CONSPIRED AND AGREED WITH
09:51AM 15 EACH OTHER AND WITH OTHER PERSONS TO KNOWINGLY POSSESS WITH
09:51AM 16 INTENT TO DISTRIBUTE METHAMPHETAMINE. NOW, METHAMPHETAMINE
09:52AM 17 IS A CONTROLLED SUBSTANCE, AND IT IS ILLEGAL TO DISTRIBUTE
09:52AM 18 METHAMPHETAMINE OR TO MANUFACTURE METHAMPHETAMINE OR TO POSSESS
09:52AM 19 WITH INTENT TO DISTRIBUTE METHAMPHETAMINE. FEDERAL LAW MAKES
09:52AM 20 IT A CRIME TO CONSPIRE WITH OTHER PERSONS TO COMMIT AN UNLAWFUL
09:52AM 21 ACT.

09:52AM 22 SO THE ALLEGATION AGAINST THESE THREE INDIVIDUALS
09:52AM 23 IS THAT THEY CONSPIRED WITH EACH OTHER AND WITH OTHER PERSONS
09:52AM 24 NAMED IN THE INDICTMENT AND PERHAPS NOT NAMED IN THE INDICTMENT
09:52AM 25 TO POSSESS WITH THE INTENT TO DISTRIBUTE METHAMPHETAMINE. THE

VOIR DIRE EXAMINATION BY THE COURT

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09:52AM 1 CRIME IS THE AGREEMENT. AND THAT'S WHAT THEY ARE ACCUSED OF.

09:52AM 2 SO, HAVING TOLD YOU WHAT THE ALLEGATIONS ARE IN

09:52AM 3 THIS CASE, DO ANY OF YOU BY ANY CHANCE KNOW ANYTHING ABOUT

09:52AM 4 THIS CASE? OKAY. I DIDN'T THINK THAT YOU WOULD.

09:53AM 5 NOW, I MENTIONED THAT THEY STAND CHARGED BY

09:53AM 6 INDICTMENT. LET ME GO OVER SOME BASIC RULES THAT APPLY IN ANY

09:53AM 7 CRIMINAL CASE. COULD I SEE A SHOW OF HANDS OF THOSE OF YOU

09:53AM 8 WHO HAVE SERVED ON JURIES IN CRIMINAL TRIALS? HOW MANY OF YOU

09:53AM 9 HAVE BEEN ON CRIMINAL JURIES? OKAY. IT LOOKS LIKE SOME OF YOU

09:53AM 10 HAVE. I'LL TELL YOU WHAT. WOULD YOU HOLD YOUR NUMBERS UP AND

09:53AM 11 LET ME JUST READ OFF YOUR NUMBERS, THOSE OF YOU WHO HAVE SERVED

09:53AM 12 IN CRIMINAL TRIALS. IT LOOKS LIKE 5, 19, 12, 20, 24, 39 AND

09:53AM 13 40. OKAY. THANK YOU.

09:53AM 14 ALL RIGHT. YOU KNOW, THEN, FROM YOUR PRIOR SERVICE

09:53AM 15 IN A CRIMINAL CASE--AND FOR THOSE OF YOU WHO HAVEN'T SERVED

09:54AM 16 AS A JUROR IN A CRIMINAL CASE, LET ME TELL YOU--THAT ANYONE

09:54AM 17 ACCUSED OF A CRIME IN OUR COUNTRY IS PRESUMED INNOCENT. THE

09:54AM 18 GOVERNMENT HAS THE BURDEN OF PROVING THE ACCUSED PERSON GUILTY.

09:54AM 19 THE FACT THAT THESE THREE INDIVIDUALS STAND CHARGED BY

09:54AM 20 INDICTMENT IS NOT EVIDENCE OF GUILT. AN INDICTMENT ITSELF

09:54AM 21 IS NO EVIDENCE OF GUILT. IT IS THE MEANS WHEREBY A PERSON

09:54AM 22 IS BROUGHT TO TRIAL IN A CRIMINAL CASE.

09:54AM 23 SO KEEP IN MIND THE PRESUMPTION OF INNOCENCE, ANYONE

09:54AM 24 ACCUSED OF A CRIME IS PRESUMED INNOCENT UNLESS AND UNTIL PROVEN

09:54AM 25 GUILTY.

VOIR DIRE EXAMINATION BY THE COURT

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09:54AM 1 THE BURDEN OF PROOF IS ON THE GOVERNMENT, NOT ON THE
09:54AM 2 ACCUSED. THE THREE DEFENDANTS DO NOT HAVE ANY RESPONSIBILITY
09:54AM 3 TO PRESENT EVIDENCE TO YOU. THE GOVERNMENT HAS THAT
09:54AM 4 RESPONSIBILITY. AND THAT RESPONSIBILITY RESTS ON MR. GONZALEZ
09:54AM 5 AND MS. BATSON. THEY WILL BE PRESENTING EVIDENCE TO YOU.

09:55AM 6 THE STANDARD OF PROOF IN A CRIMINAL CASE IS WHAT'S
09:55AM 7 CALLED "BEYOND A REASONABLE DOUBT"; THAT IS, THE GOVERNMENT
09:55AM 8 MUST CONVINCE YOU BEYOND A REASONABLE DOUBT THAT IT HAS PROVEN
09:55AM 9 THE ACCUSATION AGAINST EACH OF THESE DEFENDANTS.

09:55AM 10 IN A CIVIL CASE, THE BURDEN OF PROOF IS USUALLY BY
09:55AM 11 A PREPONDERANCE OF THE EVIDENCE, WHICH SIMPLY MEANS THE GREATER
09:55AM 12 WEIGHT OF THE CREDIBLE EVIDENCE.

09:55AM 13 BUT IN A CRIMINAL CASE THE PROOF IS HIGHER; IT MUST
09:55AM 14 BE BEYOND A REASONABLE DOUBT.

09:55AM 15 SO, AT THE CONCLUSION OF THE TRIAL, IF YOU ARE
09:55AM 16 CHOSEN ON THIS JURY, YOU WILL HAVE TO ASK YOURSELVES
09:55AM 17 INDIVIDUALLY WHETHER OR NOT YOU HAVE A REASONABLE DOUBT
09:55AM 18 ABOUT THE EVIDENCE THAT'S BEEN PRESENTED AGAINST THESE THREE
09:55AM 19 INDIVIDUALS. IF YOU HAVE A REASONABLE DOUBT AND YOU ARE NOT
09:56AM 20 CONVINCED BEYOND A REASONABLE DOUBT THAT THE GOVERNMENT HAS
09:56AM 21 PROVED EACH AND EVERY ELEMENT OF THIS CHARGE OF CONSPIRACY,
09:56AM 22 THEN YOU WOULD RETURN A VERDICT OF "NOT GUILTY." IF YOU ARE
09:56AM 23 CONVINCED THAT THE GOVERNMENT HAS PROVED TO YOU EACH AND EVERY
09:56AM 24 ELEMENT OF THE CRIME OF CONSPIRACY AGAINST THESE INDIVIDUALS,
09:56AM 25 THEN YOU WOULD RETURN A VERDICT OF "GUILTY." AND YOU'LL HAVE

VOIR DIRE EXAMINATION BY THE COURT

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09:56AM 1 TO ANALYZE THE EVIDENCE SEPARATELY WITH RESPECT TO EACH OF THE
09:56AM 2 THREE DEFENDANTS ON TRIAL.

09:56AM 3 THIS CASE WILL LAST A WEEK AND A HALF. IT COULD GO
09:56AM 4 LONGER. THAT'S JUST AN ESTIMATE. YOU'LL BE KEEPING TRACK OF
09:56AM 5 A NUMBER OF WITNESSES. AND I'M GOING TO GO THROUGH THE WITNESS
09:56AM 6 LIST HERE IN JUST A MINUTE AND SEE WHETHER OR NOT YOU KNOW ANY
09:56AM 7 OF THESE PEOPLE, BUT THERE ARE QUITE A FEW WITNESSES ON THE
09:56AM 8 WITNESS LIST. SO YOU MAY WANT TO TAKE NOTES. AND WE HAVE
09:56AM 9 NOTEPADS AND PENS IN THE JURY ROOM AVAILABLE FOR YOU.

09:57AM 10 LET ME READ THROUGH THE WITNESS LIST. AND I WILL
09:57AM 11 READ SEVERAL NAMES, THEN STOP AND ASK YOU WHETHER OR NOT YOU
09:57AM 12 KNOW ANY OF THESE PEOPLE.

09:57AM 13 I'VE ALREADY INTRODUCED TO YOU SPECIAL AGENT JOE
09:57AM 14 MATA. HE IS A POTENTIAL WITNESS IN THIS CASE.

09:57AM 15 CONTINUING, THERE ARE A NUMBER OF POTENTIAL
09:57AM 16 WITNESSES FROM THE DRUG ENFORCEMENT ADMINISTRATION. I'M GOING
09:57AM 17 TO READ TO YOU A LIST OF THEM. MANY OF THEM ARE SPECIAL AGENTS
09:57AM 18 WITH DEA.

09:57AM 19 IN ADDITION TO SPECIAL AGENT JOE MATA WITH DEA,
09:57AM 20 THERE'S ALSO ON THE WITNESS LIST AS A POTENTIAL WITNESS SPECIAL
09:57AM 21 AGENT FRITZ DIEHM, D-I-E-H-M.

09:58AM 22 SPECIAL AGENT ROBERT NEDEAU.

09:58AM 23 SPECIAL AGENT RICK CLOUGH, C-L-O-U-G-H.

09:58AM 24 SPECIAL AGENT MARCUS WEST.

09:58AM 25 SPECIAL AGENT BRAD SMITH.

VOIR DIRE EXAMINATION BY THE COURT

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09:58AM 1 SPECIAL AGENT DAOLIM NOUANESENGSY.

09:58AM 2 SPECIAL AGENT JOE PATTI, P-A-T-T-I.

09:58AM 3 SPECIAL AGENT RICK SMITH.

09:58AM 4 SPECIAL AGENT ANDY HARBINSON.

09:58AM 5 ALL OF THOSE WITNESSES ARE WITH THE DRUG ENFORCEMENT

09:58AM 6 ADMINISTRATION IN DALLAS.

09:58AM 7 DO ANY OF YOU KNOW ANY OF THOSE SPECIAL AGENTS?

09:58AM 8 CONTINUING:

09:58AM 9 SPECIAL AGENT CAROL WILSON WITH DEA.

09:58AM 10 SPECIAL AGENT CARLOS HERNANDEZ WITH DEA.

09:58AM 11 OFFICER JASON JEFFCOAT WITH THE SHERMAN POLICE

09:59AM 12 DEPARTMENT.

09:59AM 13 I'VE ALREADY INTRODUCED TO YOU OFFICER BRIAN

09:59AM 14 MCCLARAN. HE IS A POTENTIAL WITNESS IN THIS CASE. HE IS

09:59AM 15 WITH THE SHERMAN POLICE DEPARTMENT.

09:59AM 16 OFFICER KEVIN BARRETT WITH THE SHERMAN P.D.

09:59AM 17 OFFICER CARL HUDMAN, H-U-D-M-A-N, WITH THE SHERMAN

09:59AM 18 P.D.

09:59AM 19 OFFICER ERIC WITHROW WITH THE SHERMAN POLICE

09:59AM 20 DEPARTMENT.

09:59AM 21 OFFICER JOHN KENNEMER WITH THE SHERMAN POLICE

09:59AM 22 DEPARTMENT.

09:59AM 23 OFFICER KEVIN COVENEY WITH THE SHERMAN POLICE

09:59AM 24 DEPARTMENT.

09:59AM 25 OFFICER JEREMY HOUSEHOLDER WITH THE SHERMAN POLICE

VOIR DIRE EXAMINATION BY THE COURT

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09:59AM

1

DEPARTMENT.

09:59AM

2

LET ME STOP THERE. DO ANY OF THESE NAMES SOUND

09:59AM

3

FAMILIAR TO YOU? THESE ARE PEOPLE WHO ARE POTENTIALLY

09:59AM

4

WITNESSES IN THIS CASE. SO YOU, AS POTENTIAL JURORS, IF YOU

09:59AM

5

KNOW THEM, I NEED TO KNOW THAT AND THE LAWYERS NEED TO KNOW

09:59AM

6

THAT.

10:00AM

7

CONTINUING:

10:00AM

8

OFFICER BRANDON TONEY WITH THE SHERMAN POLICE

10:00AM

9

DEPARTMENT.

10:00AM

10

DEPUTY MICHAEL KUNTCHIK, K-U-N-T-C-H-I-K, WITH THE

10:00AM

11

GRAYSON COUNTY SHERIFF'S OFFICE.

10:00AM

12

TROOPER DAVID TAYLOR WITH THE TEXAS DEPARTMENT OF

10:00AM

13

PUBLIC SAFETY.

10:00AM

14

TROOPER BRAD BIGHAM WITH THE TEXAS DEPARTMENT OF

10:00AM

15

PUBLIC SAFETY.

10:00AM

16

OFFICER ROBERT HEMINGWAY WITH THE ALLEN POLICE

10:00AM

17

DEPARTMENT.

10:00AM

18

OFFICER MICHAEL BLY WITH THE ALLEN P.D.

10:00AM

19

OFFICER JOSEPH RAINES WITH THE DENISON POLICE

10:00AM

20

DEPARTMENT.

10:00AM

21

LET ME STOP THERE. DO ANY OF YOU KNOW ANY OF THOSE

10:00AM

22

LAW ENFORCEMENT OFFICERS?

10:00AM

23

OFFICER JESSE GRISSOM WITH THE DENISON POLICE

10:01AM

24

DEPARTMENT.

10:01AM

25

OFFICER CHAD COPELAND WITH THE MESQUITE POLICE

VOIR DIRE EXAMINATION BY THE COURT

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10:01AM 1 DEPARTMENT .

10:01AM 2 OFFICER ANDY CHANCE WITH THE MESQUITE POLICE

10:01AM 3 DEPARTMENT .

10:01AM 4 OFFICER ROBERT CUTTER WITH THE GAINESVILLE POLICE

10:01AM 5 DEPARTMENT .

10:01AM 6 OFFICER ANTHONY STRAUSER WITH THE GAINESVILLE POLICE

10:01AM 7 DEPARTMENT .

10:01AM 8 MARK MCDONALD, WHO IS A CHEMIST WITH THE DRUG

10:01AM 9 ENFORCEMENT ADMINISTRATION.

10:01AM 10 JENNIFER RUMPPE, WHO IS A CHEMIST WITH THE TEXAS

10:01AM 11 DEPARTMENT OF PUBLIC SAFETY.

10:01AM 12 NICK GRIZZLE, WHO IS A CHEMIST WITH THE DEPARTMENT

10:01AM 13 OF PUBLIC SAFETY.

10:01AM 14 CLAY PHELAN AND CHARITY FOREMAN, WHO ARE BOTH

10:01AM 15 CHEMISTS WITH THE DRUG ENFORCEMENT ADMINISTRATION.

10:01AM 16 DO ANY OF YOU KNOW ANY OF THOSE POTENTIAL WITNESSES?

10:01AM 17 ALL RIGHT.

10:01AM 18 GENEVIEVE MEDINA, A CHEMIST WITH THE TEXAS

10:02AM 19 DEPARTMENT OF PUBLIC SAFETY.

10:02AM 20 STACY LOGGINS, A FINGERPRINT SPECIALIST WITH THE

10:02AM 21 DRUG ENFORCEMENT ADMINISTRATION.

10:02AM 22 JOE MABERRY, A CHEMIST WITH THE DRUG ENFORCEMENT

10:02AM 23 ADMINISTRATION.

10:02AM 24 I THINK THAT CONCLUDES THE LAW ENFORCEMENT OFFICERS.

10:02AM 25 ANYONE KNOW ANY OF THOSE PEOPLE? ALL RIGHT.

VOIR DIRE EXAMINATION BY THE COURT

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10:02AM 1 THE REMAINING WITNESSES ARE NOT LAW ENFORCEMENT
10:02AM 2 OFFICERS OR ARE NOT IDENTIFIED AS SUCH ON THE WITNESS LIST.
10:02AM 3 THEY INCLUDE:
10:02AM 4 TREY TIBBS.
10:02AM 5 KENNETH HOUSE.
10:02AM 6 BOBBY JAMES.
10:02AM 7 THIEU NGUYEN.
10:02AM 8 MANUEL CAMACHO.
10:02AM 9 TASKA GRAHAM.
10:03AM 10 JOEY TREVATHAN.
10:03AM 11 CHRISTINA HOUSE.
10:03AM 12 KISHA BOWEN.
10:03AM 13 DO ANY OF YOU KNOW ANY OF THOSE POTENTIAL WITNESSES?
10:03AM 14 DANIEL JENSEN.
10:03AM 15 BRENT ASKEW.
10:03AM 16 SHANNON ASKEW.
10:03AM 17 ABRAHAM ESCUADRA-CHAVEZ.
10:03AM 18 CHRISTINA DORRIES.
10:03AM 19 AUGUSTINE RODRIGUEZ.
10:03AM 20 MANUEL URBINA.
10:03AM 21 HOA MINH HOANG, LAST NAME H-O-A-N-G.
10:03AM 22 SABRINA SCHROEDER.
10:03AM 23 JOSHUA BOWEN.
10:03AM 24 AND LET ME STOP THERE. DO ANY OF THOSE NAMES SOUND
10:03AM 25 FAMILIAR? ALL RIGHT.

VOIR DIRE EXAMINATION BY THE COURT

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10:04AM 1 CONTINUING:

10:04AM 2 MARIA DAVILA.

10:04AM 3 MELISSA STEWART.

10:04AM 4 PRISCILLA MARCELENO.

10:04AM 5 FERNANDO PERALES.

10:04AM 6 RAMIRO CAZARES.

10:04AM 7 CHARLES QUIROLO.

10:04AM 8 DO YOU RECOGNIZE ANY OF THOSE NAMES? ALL RIGHT.

10:04AM 9 AND FINALLY:

10:04AM 10 ANDREA REEVES.

10:04AM 11 BRIAN MCMENAMY.

10:04AM 12 PAUL CAMACHO.

10:04AM 13 THERE'S BOTH A MANUEL CAMACHO AND A PAUL CAMACHO.

10:04AM 14 CARLOS CABRALES.

10:04AM 15 THOSE ARE ALL OF THE INDIVIDUAL NAMES THAT I HAVE.

10:04AM 16 DO YOU RECOGNIZE ANY OF THOSE PEOPLE? OKAY.

10:04AM 17 THERE MAY ALSO BE CALLED TO TESTIFY CUSTODIANS OF

10:04AM 18 RECORDS FROM ENTERPRISE RENTAL, WESTERN UNION AND THE SUPER 8

10:05AM 19 MOTEL IN SHERMAN.

10:05AM 20 THOSE ARE THE POTENTIAL WITNESSES IN THE CASE.

10:05AM 21 THE LIST INCLUDES 72 INDIVIDUALS.

10:05AM 22 LET ME ASK YOU: HAVE ANY OF YOU EVER SERVED AS A

10:05AM 23 GRAND JUROR, EITHER A COUNTY GRAND JUROR OR A FEDERAL GRAND

10:05AM 24 JUROR? ANYBODY WHO HAS SERVED AS A GRAND JUROR IN THE PAST

10:05AM 25 OR IS NOW SERVING AS A GRAND JUROR? ANYBODY? OKAY.

VOIR DIRE EXAMINATION BY THE COURT

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10:05AM 1 HAVE ANY OF YOU EVER BEEN EMPLOYED BY A LAW
10:05AM 2 ENFORCEMENT AGENCY OR HAD A FAMILY MEMBER OR CLOSE FRIEND
10:05AM 3 EMPLOYED BY A LAW ENFORCEMENT AGENCY?

10:05AM 4 LET ME START OVER HERE. IF YOU'LL RAISE YOUR
10:05AM 5 NUMBERS. ANYONE ON THE FIRST ROW WHO HAS A RESPONSE TO THAT
10:05AM 6 QUESTION? EMPLOYED BY A LAW ENFORCEMENT AGENCY OR HAD A FAMILY
10:06AM 7 MEMBER OR CLOSE FRIEND. LET'S START WITH NUMBER 1. YES, SIR.

10:06AM 8 A. I HAVE A CLOSE FRIEND THAT'S EMPLOYED IN ORANGE COUNTY,
10:06AM 9 FLORIDA, IN THE SHERIFF'S OFFICE.

10:06AM 10 Q. OKAY. ANYTHING ABOUT HIS WORK AND YOUR RELATIONSHIP
10:06AM 11 WITH HIM AS A LAW ENFORCEMENT OFFICER THAT AFFECTS YOUR
10:06AM 12 FEELINGS ABOUT SERVING AS A JUROR IN THIS CASE?

10:06AM 13 A. NO.

10:06AM 14 Q. OKAY. COULD YOU EVALUATE THE CREDIBILITY OF LAW
10:06AM 15 ENFORCEMENT OFFICERS WHO TESTIFY THE SAME AS YOU WOULD THE
10:06AM 16 CREDIBILITY OF ANY OTHER WITNESS WHO IS CALLED TO TESTIFY?

10:06AM 17 A. SURE.

10:06AM 18 Q. OKAY. THANK YOU, SIR.

10:06AM 19 NUMBER 2? DID YOU HAVE YOUR NUMBER UP? NO.

10:06AM 20 NUMBER 4?

10:06AM 21 A. YES. D.M. HAMPTON WITH THE SHERMAN POLICE DEPARTMENT
10:06AM 22 IS A FAMILY FRIEND.

10:06AM 23 Q. OKAY.

10:06AM 24 A. ANOTHER ONE IS TONY BENNETT, TEXAS RANGER.

10:06AM 25 Q. NOW, YOU DIDN'T HEAR THAT SHERMAN POLICE OFFICER'S NAME

VOIR DIRE EXAMINATION BY THE COURT

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10:07AM 1 WHEN I READ OFF THOSE NAMES?

10:07AM 2 A. [MOVING HEAD SIDE TO SIDE]

10:07AM 3 Q. NO. OKAY. THERE MAY VERY WELL BE OTHER SHERMAN POLICE
10:07AM 4 OFFICERS OR DETECTIVES WHO WILL TESTIFY. AND YOUR FRIEND IS A
10:07AM 5 SHERMAN POLICE OFFICER. CORRECT?

10:07AM 6 A. YES. IT'S BEEN SEVERAL--OVER A PERIOD OF YEARS.

10:07AM 7 Q. OKAY. ANYTHING ABOUT THAT ACQUAINTANCE OR RELATIONSHIP
10:07AM 8 THAT WOULD AFFECT YOUR FEELINGS ABOUT BEING A JUROR IN THIS
10:07AM 9 CASE?

10:07AM 10 A. NO, SIR.

10:07AM 11 Q. OKAY.

10:07AM 12 LADIES AND GENTLEMEN, ALL YOU NEED TO BE A JUROR IS
10:07AM 13 TO SIMPLY APPROACH THE TASK WITH AN OPEN MIND, LISTEN TO THE
10:07AM 14 EVIDENCE AND--LISTEN TO THE TESTIMONY AND OBSERVE THE EVIDENCE
10:07AM 15 DURING THE COURSE OF THE TRIAL, TAKE NOTES IF YOU WISH, AND
10:07AM 16 THEN USE YOUR OWN GOOD JUDGMENT IN REACHING A VERDICT IN THE
10:07AM 17 CASE. YOU HAVE TO MAKE THE DECISION BASED UPON YOUR ASSESSMENT
10:07AM 18 OF THE TESTIMONY. AND IF THERE IS ANY RELATIONSHIP THAT YOU
10:08AM 19 HAVE WITH A WITNESS THAT MIGHT AFFECT YOUR IMPARTIALITY, THEN
10:08AM 20 YOU NEED TO LET ME KNOW. AND SO THAT'S WHY I'M ASKING THESE
10:08AM 21 QUESTIONS.

10:08AM 22 SO, JUROR NUMBER 4, YOU ARE SAYING THAT
10:08AM 23 NOTWITHSTANDING THE FACT THAT YOU ARE ACQUAINTED WITH A
10:08AM 24 SHERMAN POLICE OFFICER, YOU COULD BE A FAIR JUROR TO BOTH
10:08AM 25 THE GOVERNMENT AND TO THESE INDIVIDUALS WHO ARE ACCUSED?

VOIR DIRE EXAMINATION BY THE COURT

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10:08AM 1 A. YES, SIR.

10:08AM 2 Q. OKAY. THANK YOU, SIR.

10:08AM 3 FIRST ROW, NUMBER 8. YES, SIR.

10:08AM 4 A. MIKE AND JOHN WITH THE IRVING POLICE DEPARTMENT.

10:08AM 5 Q. OKAY. IRVING P.D. ANYTHING ABOUT YOUR FRIENDSHIP WITH
10:08AM 6 THEM THAT MIGHT AFFECT YOUR APPROACH TO BEING A JUROR IN THIS
10:08AM 7 CASE?

10:08AM 8 A. NO, SIR.

10:08AM 9 Q. IF YOU ARE CHOSEN ON THE JURY AND YOU--AFTER YOU HEAR
10:08AM 10 ALL THE EVIDENCE, IF YOU HAVE A REASONABLE DOUBT, COULD YOU
10:08AM 11 RETURN A VERDICT OF "NOT GUILTY" NOTWITHSTANDING YOUR FRIEND-
10:09AM 12 SHIP WITH POLICE OFFICERS?

10:09AM 13 A. I COULD.

10:09AM 14 Q. OKAY. THANK YOU.

10:09AM 15 LET'S GO TO THE SECOND ROW ON THIS SIDE. HAVE ANY
10:09AM 16 OF YOU SERVED AS A LAW ENFORCEMENT AGENT OR OFFICER OR HAD A
10:09AM 17 FAMILY MEMBER OR CLOSE FRIEND WHO HAS WORKED IN LAW ENFORCEMENT?
10:09AM 18 AND THAT COULD BE POLICE, SHERIFF, DRUG ENFORCEMENT, FBI, BORDER
10:09AM 19 PATROL, ANY KIND OF LAW ENFORCEMENT POSITION.

10:09AM 20 YES, MA'AM. AND YOUR NUMBER IS? I'M SORRY. 9.

10:09AM 21 OKAY. YES, MA'AM.

10:09AM 22 A. MY SON IS AN ARSON INVESTIGATOR.

10:09AM 23 Q. OKAY. ANYTHING ABOUT HIS WORK AND WHAT HE DOES THAT
10:09AM 24 WOULD AFFECT YOUR FEELINGS ABOUT BEING A JUROR IN THIS CASE?

10:09AM 25 A. NO.

VOIR DIRE EXAMINATION BY THE COURT

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10:09AM 1 Q. AND, AGAIN, MA'AM, COULD YOU USE YOUR OWN GOOD JUDGMENT
10:09AM 2 TO EVALUATE THE BELIEVABILITY OR CREDIBILITY OF EACH WITNESS,
10:09AM 3 WHETHER THAT PERSON IS A LAW ENFORCEMENT OFFICER OR NOT?

10:09AM 4 A. YES.

10:09AM 5 Q. OKAY. THANK YOU.

10:09AM 6 SECOND ROW, ANYBODY ELSE? OKAY. NUMBER 11.

10:10AM 7 A. MY BACKUP CHILDCARE IS A MEMBER OF THE DENTON COUNTY
10:10AM 8 POLICE DEPARTMENT [SIC].

10:10AM 9 Q. OKAY. DOES THAT AFFECT YOUR FEELINGS ABOUT SERVING AS
10:10AM 10 A JUROR IN THIS CASE?

10:10AM 11 A. NO.

10:10AM 12 Q. OKAY, MA'AM. COULD YOU--IF YOU HAD A REASONABLE DOUBT
10:10AM 13 AT THE CONCLUSION OF THE TRIAL ABOUT WHETHER THE GOVERNMENT
10:10AM 14 HAD PROVED ITS CASE AGAINST ONE OR MORE OF THE DEFENDANTS,
10:10AM 15 COULD YOU RETURN A VERDICT OF "NOT GUILTY"?

10:10AM 16 A. [MOVING HEAD UP AND DOWN]

10:10AM 17 Q. I'M SORRY. I DIDN'T HEAR YOU.

10:10AM 18 A. YES.

10:10AM 19 Q. ALL RIGHT.

10:10AM 20 ANYONE ELSE ON THE SECOND ROW THERE WHO HAS WORKED
10:10AM 21 IN LAW ENFORCEMENT OR HAD A FAMILY MEMBER OR FRIEND WORKING IN
10:10AM 22 LAW ENFORCEMENT? NUMBER 14. YES, MA'AM.

10:10AM 23 A. YES. TWO OF MY COLLEAGUES THAT I TAUGHT WITH AT
10:10AM 24 A PRIVATE SCHOOL HERE IN TOWN ARE POLICE OFFICERS' WIVES.

10:10AM 25 Q. ALL RIGHT.

VOIR DIRE EXAMINATION BY THE COURT

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10:10AM 1 A. WE'VE SOCIALIZED WITH THE OFFICERS AS WELL.

10:10AM 2 Q. OKAY. ANYTHING ABOUT THAT FACT THAT WOULD AFFECT YOUR
10:11AM 3 ABILITY TO FAIRLY AND IMPARTIALLY EVALUATE THE EVIDENCE IN THE
10:11AM 4 CASE?

10:11AM 5 A. I DON'T THINK SO.

10:11AM 6 Q. OKAY. THANK YOU, MA'AM.

10:11AM 7 ANYONE ELSE ON THE SECOND ROW? OKAY.

10:11AM 8 THIRD ROW? ANYBODY WORKED IN LAW ENFORCEMENT OR HAD
10:11AM 9 A FAMILY MEMBER OR CLOSE FRIEND IN LAW ENFORCEMENT? NUMBER 21.

10:11AM 10 A. MY SISTER-IN-LAW IS A GRAPEVINE POLICE DEPARTMENT
10:11AM 11 DISPATCHER.

10:11AM 12 Q. I'M SORRY. WHAT POLICE DEPARTMENT?

10:11AM 13 A. GRAPEVINE.

10:11AM 14 Q. GRAPEVINE. OKAY. LET'S SEE. COULD YOU CAREFULLY
10:11AM 15 EVALUATE THE TESTIMONY OF A POLICE OFFICER JUST AS YOU WOULD
10:11AM 16 ANY WITNESS WHO IS CALLED TO THE WITNESS STAND?

10:11AM 17 A. YES, SIR.

10:11AM 18 Q. AND WOULD YOU BELIEVE A POLICE OFFICER SIMPLY BECAUSE
10:11AM 19 HE OR SHE IS A POLICE OFFICER?

10:11AM 20 A. NO, SIR.

10:11AM 21 Q. THANK YOU. THANK YOU, NUMBER 21.

10:11AM 22 ANYONE ELSE ON THAT THIRD ROW?

10:11AM 23 FOURTH ROW? NUMBER 30. YES, MA'AM.

10:12AM 24 A. YES, SIR. MY DAD'S A RETIRED DALLAS POLICE OFFICER.
10:12AM 25 AND HE'S RETIRED FROM THE COUNTY FOR THE DISTRICT ATTORNEY'S

VOIR DIRE EXAMINATION BY THE COURT

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10:12AM 1 OFFICE IN DALLAS.

10:12AM 2 Q. OKAY. ANYTHING ABOUT HIS WORK OR WHAT YOU KNOW ABOUT
10:12AM 3 IT THAT WOULD AFFECT YOUR FEELINGS ABOUT THIS CASE?

10:12AM 4 A. NO, SIR.

10:12AM 5 Q. IF YOU ARE CHOSEN AS A JUROR, DO YOU BELIEVE THAT YOU
10:12AM 6 COULD IMPARTIALLY AND FAIRLY EVALUATE THE EVIDENCE AND BE A
10:12AM 7 FAIR JUROR FOR BOTH THE GOVERNMENT AND FOR THE INDIVIDUALS WHO
10:12AM 8 ARE ACCUSED HERE?

10:12AM 9 A. YES, SIR, I DO.

10:12AM 10 Q. OKAY. THANK YOU.

10:12AM 11 LET'S GO TO THIS SIDE OF THE COURTROOM. ON THE
10:12AM 12 FIRST ROW, IT LOOKS LIKE NUMBER 36. YES, SIR.

10:12AM 13 A. YES, SIR. THE FITNESS CENTER THAT I RUN DOES A LOT
10:12AM 14 OF PROGRAMS FOR MIDDLE-MANAGEMENT POLICE OFFICERS IN TEXAS.

10:12AM 15 Q. ALL RIGHT. SO SOME OF THEM ARE YOUR CUSTOMERS?

10:12AM 16 A. YES, SIR.

10:12AM 17 Q. ALL RIGHT. ANYTHING ABOUT THAT THAT WOULD AFFECT YOUR
10:13AM 18 APPROACH TO BEING A JUROR IN THIS CASE?

10:13AM 19 A. NO, SIR.

10:13AM 20 Q. OKAY. COULD YOU EVALUATE THE TESTIMONY OF POLICE
10:13AM 21 OFFICERS USING THE SAME STANDARDS AS YOU WOULD APPLY TO ANY
10:13AM 22 OTHER WITNESS?

10:13AM 23 A. YES, SIR.

10:13AM 24 Q. THANK YOU.

10:13AM 25 NUMBER 37. YES, MA'AM.

VOIR DIRE EXAMINATION BY THE COURT

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10:13AM 1 A. MY BROTHER WAS A TEXAS MARSHAL AND IS AN FBI AGENT.

10:13AM 2 Q. ALL RIGHT. THE SAME QUESTION FOR YOU, MA'AM. DOES
10:13AM 3 THAT AFFECT YOUR FEELINGS ABOUT THIS CASE?

10:13AM 4 A. NO.

10:13AM 5 Q. ALL RIGHT. AND COULD YOU BE A FAIR JUROR FOR BOTH
10:13AM 6 SIDES?

10:13AM 7 A. YES, I COULD.

10:13AM 8 Q. THANK YOU.

10:13AM 9 NUMBER 38. YES, SIR.

10:13AM 10 A. I AM A HIGH SCHOOL TEACHER AND COACH AND HAVE BEEN--
10:13AM 11 I HAVE VARIOUS DEALINGS WITH POLICE OFFICERS ALMOST ON A DAILY
10:13AM 12 BASIS.

10:13AM 13 Q. OKAY.

10:13AM 14 A. CARROLTON--EXCUSE ME. IRVING, GRAND PRAIRIE, AND A
10:13AM 15 FORMER BALLPLAYER IS A POLICE OFFICER AT DFW AIRPORT.

10:14AM 16 Q. OKAY. ANYTHING ABOUT THOSE RELATIONSHIPS AND FRIEND-
10:14AM 17 SHIPS THAT WOULD AFFECT YOUR FEELINGS ABOUT BEING A JUROR IN
10:14AM 18 THIS CASE?

10:14AM 19 A. NOT AT ALL.

10:14AM 20 Q. OKAY. THANK YOU, SIR.

10:14AM 21 ANYONE ELSE ON THAT FIRST ROW?

10:14AM 22 WHAT ABOUT ON THE SECOND ROW? WORKED IN LAW
10:14AM 23 ENFORCEMENT OR HAD A FAMILY MEMBER OR CLOSE FRIEND WHO HAS
10:14AM 24 WORKED IN LAW ENFORCEMENT OR IS WORKING IN LAW ENFORCEMENT?
10:14AM 25 OKAY.

VOIR DIRE EXAMINATION BY THE COURT

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10:14AM 1 LADIES AND GENTLEMEN, THERE ARE A COUPLE OF
10:14AM 2 QUESTIONS THAT I NEED TO ASK YOU BECAUSE THIS IS A CRIMINAL
10:14AM 3 CASE AND BECAUSE THE ALLEGATION INVOLVES ILLEGAL DRUG ACTIVITY.
10:14AM 4 IF YOU HAVE A RESPONSE TO THIS QUESTION AND YOU WANT TO VISIT
10:14AM 5 WITH ME OUTSIDE THE PRESENCE OF THE OTHER JURORS, IF YOU WILL
10:14AM 6 JUST HOLD YOUR NUMBER UP LONG ENOUGH SO I CAN MAKE A CHECKMARK
10:14AM 7 BY YOUR NAME.

10:14AM 8 WE HAVE CHARTS THAT TELL US YOUR NAME, THE CITY IN
10:14AM 9 WHICH YOU LIVE, YOUR OCCUPATION, AND YOUR SPOUSE'S OCCUPATION.
10:15AM 10 OTHER THAN THAT, WE DON'T KNOW ANYTHING ABOUT YOU. SO THAT'S
10:15AM 11 WHY THERE'S AN OPPORTUNITY FOR ME TO ASK QUESTIONS AND IN A
10:15AM 12 MOMENT THERE WILL BE AN OPPORTUNITY FOR THE LAWYERS TO ASK YOU
10:15AM 13 QUESTIONS.

10:15AM 14 OKAY. THE NEXT QUESTION I HAVE IS: HAVE ANY OF
10:15AM 15 YOU EVER BEEN INVOLVED IN A CRIMINAL MATTER IN ANY COURT THAT
10:15AM 16 CONCERNED YOU OR A FAMILY MEMBER OR A CLOSE FRIEND EITHER AS A
10:15AM 17 DEFENDANT IN A CRIMINAL CASE, A WITNESS TO A CRIME, OR A VICTIM
10:15AM 18 OF A CRIME? SO HAVE YOU BEEN INVOLVED IN A CRIMINAL MATTER
10:15AM 19 IN COURT THAT CONCERNED YOU, A FAMILY MEMBER OR A CLOSE FRIEND
10:15AM 20 EITHER AS A DEFENDANT, A WITNESS OR A VICTIM? AND IF YOU WANT
10:15AM 21 TO JUST HOLD UP YOUR NUMBER, I CAN COME BACK TO YOU AND TALK TO
10:15AM 22 YOU INDIVIDUALLY AT A LATER TIME.

10:16AM 23 OKAY. ON THE FIRST ROW. OKAY. I HAVE THE FIRST
10:16AM 24 ROW.

10:16AM 25 SECOND ROW? LET'S SEE. JUST KEEP YOUR NUMBERS UP

VOIR DIRE EXAMINATION BY THE COURT

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10:16AM 1 JUST FOR A MOMENT.

10:16AM 2 AND THEN BACK IN THE BACK. OKAY.

10:16AM 3 I THINK I HAVE ALL THE NUMBERS ON THIS SIDE.

10:16AM 4 WHAT ABOUT ON THIS SIDE OF THE ROOM? AGAIN, THE
10:16AM 5 QUESTION IS WHETHER YOU'VE BEEN INVOLVED IN A CRIMINAL MATTER
10:16AM 6 THAT WENT TO COURT THAT CONCERNED YOU, A FAMILY MEMBER OR A
10:16AM 7 CLOSE FRIEND IN SOME WAY. OKAY.

10:16AM 8 ONLY ONE NUMBER, 48. OKAY.

10:16AM 9 ANYONE ELSE? CLOSE FRIEND OR FAMILY MEMBER BEEN
10:16AM 10 INVOLVED IN A CRIMINAL MATTER AS A DEFENDANT, A WITNESS TO A
10:16AM 11 CRIME OR A VICTIM OF A CRIME? NOBODY ELSE. OKAY.

10:17AM 12 THE NEXT QUESTION MAY OVERLAP WITH THE QUESTION
10:17AM 13 I JUST ASKED. THIS QUESTION IS: HAVE ANY OF YOU HAD ANY
10:17AM 14 EXPERIENCE INVOLVING YOURSELF, A FAMILY MEMBER OR A CLOSE
10:17AM 15 FRIEND THAT RELATES TO THE USE OR POSSESSION OF ILLEGAL DRUGS?
10:17AM 16 LET ME START BACK OVER HERE.

10:17AM 17 OKAY. IF YOU WILL KEEP YOUR NUMBERS UP JUST FOR A
10:17AM 18 MOMENT. OKAY. I HAVE THE NUMBERS ON THIS SIDE.

10:18AM 19 LADIES AND GENTLEMEN, DO ANY OF YOU HAVE A DOCTOR'S
10:18AM 20 APPOINTMENT THAT YOU DO NOT WANT TO RESCHEDULE THAT IS SET
10:18AM 21 FOR THIS WEEK OR NEXT WEEK? ANYBODY IN THAT POSITION? OKAY.
10:18AM 22 NUMBER 25.

10:18AM 23 I'LL EXPAND THAT. A DOCTOR'S APPOINTMENT OR ANY
10:18AM 24 KIND OF MEDICAL PROCEDURE OR SURGERY OR TREATMENT THAT YOU HAVE
10:18AM 25 SCHEDULED FOR THIS WEEK OR NEXT WEEK THAT YOU DO NOT WANT TO

VOIR DIRE EXAMINATION BY THE COURT

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10:18AM 1 RESCHEDULE? OKAY. THANK YOU.

10:19AM 2 DO ANY OF YOU HAVE--NOT A BUSINESS TRIP, BUT A
10:19AM 3 FAMILY VACATION SCHEDULED FOR THIS WEEK OR NEXT WEEK THAT
10:19AM 4 YOU HAVE ALREADY ARRANGED TO GO OUT OF TOWN? ANYBODY IN
10:19AM 5 THAT SITUATION? OKAY.

10:19AM 6 DO ANY OF YOU WORK NIGHTS? ARE THERE ANY OF YOU WHO
10:19AM 7 WORK NIGHTS AND WOULD YOU BE REQUIRED TO WORK AT NIGHT EVEN IF
10:19AM 8 YOU ARE ON A JURY DURING THE DAY? ANYBODY IN THAT POSITION?
10:19AM 9 OKAY.

10:19AM 10 I'LL TELL YOU WHAT. LET'S JUST GET A MICROPHONE TO
10:19AM 11 NUMBER 17. LET ME SEE IF I CAN ASK HIM A QUESTION ABOUT THIS
10:19AM 12 RIGHT NOW.

10:20AM 13 JUROR NUMBER 17, YOU WORK AT NIGHT, IS THAT CORRECT?

10:20AM 14 A. YES, SIR.

10:20AM 15 Q. AND BY "NIGHT," HOW LATE DO YOU WORK?

10:20AM 16 A. ACTUALLY, I WORK ALL DAY. I'M WORKING AT NIGHT RIGHT
10:20AM 17 NOW. I GO IN AT 5:00 AND I'M OUT AROUND 11, 11:30. SOME
10:20AM 18 MORNINGS.

10:20AM 19 Q. OKAY. IF YOU ARE CHOSEN AS A JUROR, WOULD YOU BE
10:20AM 20 REQUIRED TO CONTINUE TO WORK AT NIGHT?

10:20AM 21 A. YES.

10:20AM 22 Q. OKAY. SO IF YOU FINISH AT 11 OR 11:30, WHEN CAN YOU
10:20AM 23 GET TO SLEEP?

10:20AM 24 A. MIDNIGHT, 1:00.

10:20AM 25 Q. AND YOU WOULD NEED TO BE HERE AT 9:00 IN THE MORNING.

VOIR DIRE EXAMINATION BY THE COURT

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10:20AM 1 WOULD THAT BE A PROBLEM FOR YOU?

10:20AM 2 A. YES.

10:20AM 3 Q. IT WOULD?

10:20AM 4 A. YES.

10:20AM 5 Q. OKAY. THANK YOU.

10:21AM 6 ANYONE ELSE WHO WORKS NIGHTS AND WOULD HAVE TO
10:21AM 7 CONTINUE TO WORK AT NIGHT EVEN IF YOU ARE CHOSEN ON THE
10:21AM 8 JURY? NUMBER 41. OKAY.

10:21AM 9 LET'S GET A MICROPHONE TO HIM.

10:21AM 10 A. SIR, I SUPPORT AN OFFSHORE TEAM, BUT NOT DAILY.

10:21AM 11 Q. I'M SORRY. COULD YOU TELL ME THAT AGAIN?

10:21AM 12 A. SIR, I NEED TO SUPPORT OFFSHORE TEAM, SO I NEED TO WORK
10:21AM 13 OCCASIONALLY NIGHTTIME.

10:21AM 14 Q. YOU NEED TO SUPPORT WHO?

10:21AM 15 A. OFFSHORE TEAM. MY OFFSHORE TEAM.

10:21AM 16 Q. OFFSHORE TEAM. OH, OKAY. SO HOW LATE DO YOU WORK AT
10:21AM 17 NIGHT?

10:21AM 18 A. 11 OR 12 SOMETIMES. 11 OR 12:00 AT NIGHT.

10:21AM 19 Q. IF YOU ARE CHOSEN ON THIS JURY, WOULD YOUR EMPLOYER
10:21AM 20 REQUIRE YOU TO CONTINUE TO WORK AT NIGHT?

10:21AM 21 A. IT'S NOT REQUIREMENT, IT'S MY RESPONSIBILITY, BECAUSE
10:21AM 22 I'M THE MANAGER FOR THE TEAM.

10:21AM 23 Q. ALL RIGHT. COULD YOU WORK UNTIL 11 OR 12:00 AT NIGHT
10:22AM 24 AND BE HERE AT 9:00 IN THE MORNING AS A JUROR?

10:22AM 25 A. I'M OKAY WITH THAT. I'LL BE HERE AT 9:00.

VOIR DIRE EXAMINATION BY THE COURT

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10:22AM 1 Q. OKAY. HOW MUCH SLEEP WOULD YOU GET IF YOU DID THAT?

10:22AM 2 A. SIX OR SEVEN HOURS.

10:22AM 3 Q. DO YOU USUALLY GET MORE SLEEP THAN THAT?

10:22AM 4 A. NO, SAME. SAME. ALMOST SAME. SIX OR SEVEN OR LESS.

10:22AM 5 Q. ALL RIGHT. THANK YOU.

10:22AM 6 ANYONE ELSE WHO WORKS NIGHTS? OKAY.

10:22AM 7 DO ANY OF YOU HAVE ANY PROBLEM SITTING FOR A COUPLE

10:22AM 8 OF HOURS AT A TIME AND LISTENING TO TESTIMONY, LISTENING TO

10:22AM 9 PEOPLE TESTIFY FROM THE WITNESS STAND? IS THERE ANYONE WHO

10:22AM 10 NEEDS TO TAKE MORE FREQUENT BREAKS THAN EVERY TWO HOURS?

10:23AM 11 ARE THERE ANY OF YOU WHO--AM I GETTING SOME NUMBERS

10:23AM 12 OVER HERE? OKAY. 34, 35. ALL RIGHT. JURORS 34 AND 35,

10:23AM 13 I'LL COME BACK AND VISIT WITH YOU. AND 33. OKAY.

10:23AM 14 ARE THERE ANY OF YOU WHO WOULD HAVE TROUBLE JUST

10:23AM 15 SITTING SUCH THAT YOU WOULD HAVE TO STAND OFTEN? OKAY. I'M

10:23AM 16 NOT ANNOUNCING NUMBERS ON THE RECORD, BUT I'M NOTING THEM AS

10:23AM 17 YOU HOLD UP YOUR NUMBERS. OKAY. I'LL COME BACK TO YOU LADIES

10:23AM 18 AND TALK TO YOU INDIVIDUALLY A LITTLE BIT LATER.

10:24AM 19 ARE THERE ANY OF YOU WHO HAVE A HEARING PROBLEM?

10:24AM 20 ANYONE WHO HAS NOT BEEN ABLE TO HEAR ME THIS MORNING? NUMBER

10:24AM 21 2, HAVE YOU BEEN ABLE--

10:24AM 22 COULD WE GET A MICROPHONE TO NUMBER 2.

10:24AM 23 JUROR NUMBER 2, HAVE YOU BEEN ABLE TO HEAR ME THIS

10:24AM 24 MORNING?

10:24AM 25 A. YES. BUT I DO HAVE A LOSS OF HEARING IN MY RIGHT EAR.

VOIR DIRE EXAMINATION BY THE COURT

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10:24AM 1 Q. OKAY.

10:24AM 2 A. SO, DEPENDING ON WHERE I'M SITTING, SOMETIMES THAT
10:24AM 3 COULD BE A PROBLEM.

10:24AM 4 Q. OKAY. I THINK YOU RAISED YOUR HAND ABOUT A DOCTOR'S
10:24AM 5 APPOINTMENT, TOO.

10:24AM 6 A. YEAH. BUT I'M NOT SURE WHETHER IT'S ON THE 12TH OR THE
10:24AM 7 17TH. I DON'T HAVE MY CELL PHONE, SO...

10:24AM 8 Q. OKAY. THE 12TH IS A WEDNESDAY. THE 17TH WOULD BE THE
10:24AM 9 NEXT MONDAY.

10:24AM 10 A. YEAH. SO...

10:24AM 11 Q. OKAY. ALL RIGHT. OKAY, MA'AM. THANK YOU.

10:25AM 12 LADIES AND GENTLEMEN, IS THERE ANYTHING ELSE THAT
10:25AM 13 YOU CAN THINK OF THAT YOU THINK THAT I SHOULD KNOW ABOUT OR
10:25AM 14 THE LAWYERS SHOULD KNOW ABOUT BEFORE WE PROCEED HERE WITH
10:25AM 15 QUESTIONING AND JURY SELECTION?

10:25AM 16 14 OF YOU WILL BE CHOSEN TO SERVE ON THIS JURY.
10:25AM 17 TWO WILL BE ALTERNATES, BUT YOU'LL PARTICIPATE IN THE TRIAL
10:25AM 18 THE SAME AS THE FIRST 12. AGAIN, IF THE FIRST 12 ARE READY
10:25AM 19 TO DELIBERATE A WEEK AND A HALF FROM NOW, THEN I'LL RELEASE
10:25AM 20 THE TWO ALTERNATES. BUT THERE'S ALWAYS THE POSSIBILITY THE
10:25AM 21 ALTERNATES COULD BE SEATED IN PLACE OF A JUROR WHO HAS TO BE
10:25AM 22 EXCUSED.

10:25AM 23 OKAY. I'M GOING TO ASK YOU AT THIS TIME TO GIVE
10:25AM 24 YOUR ATTENTION TO MR. GONZALEZ. HE IS GOING TO HAVE SOME
10:25AM 25 QUESTIONS FOR YOU ON BEHALF OF THE GOVERNMENT. AND THEN EACH

VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

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10:25AM 1 OF THE THREE DEFENSE LAWYERS WILL HAVE A CHANCE TO QUESTION
10:25AM 2 YOU. KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG ANSWERS
10:25AM 3 TO ANY OF THESE QUESTIONS. THEY SIMPLY WANT TO GO OVER SOME
10:26AM 4 THINGS WITH YOU, SEE WHAT YOUR REACTION IS TO THAT, TOUCH ON
10:26AM 5 SOME OF THE LAW THAT MAY APPLY IN THIS CASE, MAKE SURE THAT
10:26AM 6 YOU WOULD ENFORCE THAT LAW.

10:26AM 7 PLEASE SPEAK UP AND RESPOND CANDIDLY TO WHATEVER
10:26AM 8 QUESTIONS THEY HAVE FOR YOU.

10:26AM 9 MR. GONZALEZ.

10:26AM 10 VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

10:26AM 11 MR. GONZALEZ: THANK YOU, YOUR HONOR.

10:26AM 12 LADIES AND GENTLEMEN, FIRST OF ALL, LET ME INTRODUCE
10:26AM 13 MYSELF. I'M ERNEST GONZALEZ. I'M WITH THE U.S. ATTORNEY'S
10:26AM 14 OFFICE HERE IN PLANO, TEXAS.

10:26AM 15 MS. BATSON IS ALSO A PROSECUTOR HERE IN PLANO,
10:26AM 16 TEXAS.

10:26AM 17 AND THE CASE THAT YOU ARE ABOUT TO HEAR, IF YOU
10:26AM 18 ARE SELECTED TO BE ON THIS JURY, AS THE JUDGE TOLD YOU, IS A
10:26AM 19 FEDERAL CASE INVOLVING DRUG DISTRIBUTION.

10:26AM 20 AND THIS PART OF THE TRIAL THAT WE'RE GOING THROUGH
10:26AM 21 RIGHT NOW IS CALLED "VOIR DIRE." WE CALL IT "VOIR DIRE." IT'S
10:27AM 22 A FRENCH TERM, ACTUALLY PRONOUNCED "VOIR DIRE." IT MEANS TO
10:27AM 23 TELL THE TRUTH, OR TO SPEAK THE TRUTH. AND THIS IS THE ONLY
10:27AM 24 OPPORTUNITY THAT WE AS ATTORNEYS GET TO ASK YOU SOME QUESTIONS
10:27AM 25 AND YOU GET TO ASK US SOME QUESTIONS. BECAUSE ONCE YOU ARE

VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

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1 SELECTED TO BE A JUROR, WE CAN'T SPEAK TO YOU ANYMORE. WE CAN
2 PASS YOU UP IN THE HALLWAYS, WE CAN'T HAVE ANY CONVERSATIONS
3 OR CONTACT WITH YOU ANYMORE, EITHER PARTY. SO THIS IS OUR ONLY
4 OPPORTUNITY TO GET TO KNOW YOU AND TO ASK YOU THE QUESTIONS
5 JUST LIKE THE JUDGE DID, BUT MAYBE GET SOME OF YOUR OPINIONS
6 AND FEELINGS ABOUT THIS PARTICULAR TYPE OF CASE.

7 BECAUSE ALL OF YOU, AS YOU SIT HERE TODAY, ARE
8 QUALIFIED TO BE ON THIS JURY. BUT SOME OF YOU, BECAUSE OF YOUR
9 LIFE'S EXPERIENCES, MAY NOT BE THE BEST PERSON TO SIT ON THIS
10 TYPE OF CASE. FOR EXAMPLE, LET'S SAY THAT YOU WORK AS A BANK
11 TELLER, AND YESTERDAY SOMEBODY WALKED INTO THE BANK AND ROBBED
12 THE BANK, AND THEN YOU COME IN HERE TODAY FOR JURY SERVICE AND
13 THE CASE THAT'S GONNA BE PRESENTED TO YOU IS A BANK ROBBERY.
14 WELL, BECAUSE OF THE FACT THAT YOU WERE JUST INVOLVED IN A
15 SIMILAR OCCURRENCE, YOU MIGHT NOT BE IN THE RIGHT FRAME OF
16 MIND, YOU MIGHT STILL BE SHAKEN BY THE EXPERIENCE, AND YOU MAY
17 NOT BE THE BEST JUROR FOR THAT PARTICULAR TYPE OF CASE.

18 THE SAME THING HERE. THIS IS A DRUG CASE. SO WE
19 GET TO ASK YOU QUESTIONS AND DETERMINE WHETHER YOU CAN BE
20 FAIR AND IMPARTIAL, NOT ONLY TO THE DEFENDANTS, BUT TO THE
21 GOVERNMENT AS WELL. AND WE DO THAT BY ASKING YOU QUESTIONS
22 AND ELICITING RESPONSES.

23 AND I KNOW IT'S DIFFICULT TO TALK IN PUBLIC. AND
24 STUDIES HAVE BEEN CONDUCTED, AND THAT'S ONE OF THE BIGGEST
25 FEARS THAT PEOPLE HAVE, IS SPEAKING UP IN PUBLIC. BUT I ASK

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10:28AM 1 YOU TO SET THAT ASIDE AND TALK TO US AND GIVE US YOUR HONEST
10:28AM 2 OPINIONS AND YOUR HONEST FEELINGS ABOUT CERTAIN THINGS THAT I'M
10:28AM 3 GONNA TALK TO YOU ABOUT AND DEFENSE ATTORNEYS--DEFENSE COUNSEL
10:28AM 4 IS GONNA TALK TO YOU ABOUT.

10:28AM 5 NOW, AS THE JUDGE HAS TOLD YOU, THERE ARE NO RIGHT
10:28AM 6 OR WRONG ANSWERS HERE. AND NONE OF MY QUESTIONS ARE INTENDED
10:28AM 7 TO EMBARRASS OR ALARM YOU IN ANY WAY. IF THERE'S A QUESTION
10:29AM 8 THAT YOU DON'T WANT TO ANSWER IN FRONT OF EVERYONE, LET US KNOW
10:29AM 9 AND WE'LL TAKE YOUR NUMBER DOWN AND WE'LL DO IT IN PRIVATE,
10:29AM 10 JUST LIKE THE JUDGE DID. OKAY?

10:29AM 11 NOW, MY QUESTIONS ARE GONNA BE SIMILAR TO WHAT THE
10:29AM 12 JUDGE DID ALREADY, QUESTION AND ANSWER, ASKING YOU IF IT
10:29AM 13 APPLIES TO YOU, TO RAISE YOUR HAND OR YOUR NUMBER SO THAT
10:29AM 14 WE CAN DOCUMENT THAT.

10:29AM 15 NOW, AS THE JUDGE TOLD YOU, WE'RE ATTEMPTING TO
10:29AM 16 SELECT 12 INDIVIDUALS TO SERVE ON THE CORE JURY, THEN THERE
10:29AM 17 WILL BE TWO ALTERNATES.

10:29AM 18 NOW LET'S TALK ABOUT WHAT WILL HAPPEN IF YOU ARE
10:29AM 19 SELECTED TO BE A JUROR ON THIS PARTICULAR CASE. IF YOU
10:29AM 20 ARE SELECTED TO BE A JUROR, YOU WILL BASICALLY HAVE TWO
10:29AM 21 RESPONSIBILITIES:

10:29AM 22 THE FIRST RESPONSIBILITY IS TO FOLLOW THE LAW GIVEN
10:29AM 23 TO YOU BY THE COURT. YOU DON'T HAVE TO BE A LEGAL SCHOLAR TO
10:29AM 24 SERVE ON A JURY. ALL THE LAW THAT YOU NEED TO REACH A VERDICT
10:29AM 25 IN THIS CASE WILL BE GIVEN TO YOU BY THE COURT IN A DOCUMENT AT

VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

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1 THE END OF THE TRIAL, CALLED "THE JURY INSTRUCTIONS." IN
2 THAT DOCUMENT, YOU'LL HAVE ALL THE LAW THAT APPLIES, ALL THE
3 DEFINITIONS THAT APPLY. AND I'M GONNA COVER SOME VERY SPECIFIC
4 APPLICATIONS OF THE LAW AND SPECIFIC DEFINITIONS HERE SHORTLY
5 TO GET YOUR OPINIONS, IF POSSIBLE. BUT THAT WILL BE YOUR FIRST
6 RESPONSIBILITY. AND IT IS WELL WITHIN YOUR RIGHT TO DISAGREE
7 WITH THE LAW. BUT IF YOU BECOME A JUROR IN THIS CASE, YOU'LL
8 TAKE A SWORN OATH TO FOLLOW THE LAW AND ENFORCE THE LAW, AND
9 YOU'LL HAVE TO DO THAT.

10 NOW, AS THE JUDGE TOLD YOU, THE LAW THAT'S INVOLVED
11 IN THIS CASE IS CONSPIRACY TO POSSESS WITH THE INTENT TO
12 DISTRIBUTE OR MANUFACTURE METHAMPHETAMINE. AND AS THE JUDGE
13 ALSO INSTRUCTED YOU, METHAMPHETAMINE IS A CONTROLLED SUBSTANCE.
14 SO THAT IS THE DRUG THAT'S INVOLVED HERE.

15 NOW, THE JUDGE WILL ALSO TELL YOU THAT IN ORDER FOR
16 YOU TO FIND SOMEONE GUILTY IN THAT JURY INSTRUCTION THAT YOU
17 RECEIVE AT THE END, THAT THE GOVERNMENT MUST PROVE TO YOU
18 SPECIFIC ELEMENTS FOR THAT OFFENSE. AND IN THIS CASE, THERE'S
19 THREE SPECIFIC ELEMENTS THAT THE GOVERNMENT MUST PROVE TO YOU
20 BEYOND A REASONABLE DOUBT. AND I'LL EXPLAIN OR TALK TO YOU
21 ABOUT "REASONABLE DOUBT" HERE SHORTLY, BUT LET ME GO OVER THE
22 ELEMENTS WITH YOU THAT I ANTICIPATE THE JUDGE WILL GIVE YOU.

23 FIRST, THAT TWO OR MORE PERSONS, DIRECTLY OR
24 INDIRECTLY, REACHED AN AGREEMENT TO POSSESS WITH THE INTENT
25 TO DISTRIBUTE OR MANUFACTURE METHAMPHETAMINE.

VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

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1 SECONDLY, THAT THE DEFENDANT KNEW THE UNLAWFUL
2 PURPOSE OF THE AGREEMENT.

3 AND LASTLY, THAT THE DEFENDANT JOINED IN THE
4 AGREEMENT WILLFULLY, THAT IS, WITH THE INTENT TO FURTHER
5 ITS UNLAWFUL PURPOSE.

6 THOSE ARE THE THREE ELEMENTS THAT THE GOVERNMENT
7 MUST PROVE TO YOU BEYOND A REASONABLE DOUBT BY ITS EVIDENCE
8 THAT IT PRESENTS TO YOU THAT YOU BELIEVE. OKAY?

9 NOW, IMPORTANTLY IN THOSE ELEMENTS, AND THE
10 JUDGE TOLD YOU THAT IN A CONSPIRACY THE AGREEMENT IS WHAT'S
11 IMPORTANT. AND INTERESTINGLY ENOUGH, IN NUMBER 1 IT SAYS
12 THAT TWO OR MORE PERSONS, DIRECTLY OR INDIRECTLY, REACHED
13 AN AGREEMENT TO POSSESS WITH THE INTENT TO DISTRIBUTE OR
14 MANUFACTURE METHAMPHETAMINE. OKAY?

15 ELEMENT NUMBER 2. THAT THE DEFENDANT KNEW THE
16 UNLAWFUL PURPOSE OF THE AGREEMENT.

17 ELEMENT NUMBER 3. THAT THE DEFENDANT JOINED IN THE
18 AGREEMENT WILLFULLY, THAT IS, WITH THE INTENT TO FURTHER ITS
19 UNLAWFUL PURPOSE.

20 WHY IS THAT IMPORTANT? BECAUSE THE LINCHPIN OR WHAT
21 STARTS A CONSPIRACY IS THE AGREEMENT. OKAY? ONCE AN AGREEMENT
22 IS MADE, WHETHER THEY'RE SUCCESSFUL IN THEIR ILLEGAL ACTS
23 IS NOT REQUIRED IN A CONSPIRACY. ALL THAT'S REQUIRED IS
24 AN AGREEMENT. ANY ISSUES OR PROBLEMS WITH THAT?

25 FOR EXAMPLE, LET'S SAY THAT BANK-ROBBERY HYPOTHETICAL

VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

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10:32AM 1 THAT I GAVE YOU, TWO INDIVIDUALS DECIDE, "WE'RE GONNA ROB A
10:32AM 2 BANK." AND AS THEY MAKE AN AGREEMENT TO DO THAT AND THEY'RE
10:32AM 3 ON THEIR WAY TO DO THAT, THEY GET ARRESTED. THEY DIDN'T ROB
10:32AM 4 THE BANK, BUT THEY DID HAVE A CONSPIRACY, BECAUSE THEY HAD AN
10:32AM 5 AGREEMENT. ANY QUESTIONS OR PROBLEMS WITH THAT THEORY? OKAY.

10:33AM 6 NOW, I'VE ALSO TOLD YOU, AND THE JUDGE HAS TOLD
10:33AM 7 YOU, THAT THIS IS A CASE INVOLVING POSSESSION OF A CONTROLLED
10:33AM 8 SUBSTANCE. WELL, THERE'S DIFFERENT TYPES OF POSSESSION IN THE
10:33AM 9 LAW. AND THE JUDGE WILL GIVE YOU THE DEFINITION IN THE JURY
10:33AM 10 CHARGE, AND I'LL GO OVER THEM AND SEE IF YOU HAVE ANY OPINIONS
10:33AM 11 OR CONCERNS ABOUT IT.

10:33AM 12 THERE IS WHAT WE CALL "SOLE POSSESSION." IF I HAVE
10:33AM 13 AN OBJECT IN MY HAND, I HAVE SOLE POSSESSION OF THIS OBJECT
10:33AM 14 RIGHT NOW. PRETTY STRAIGHTFORWARD.

10:33AM 15 IF ME AND MS. BATSON HAVE IT TOGETHER, THEN WE HAVE
10:33AM 16 JOINT POSSESSION OF THIS OBJECT. THAT'S A DEFINITION OF AN
10:33AM 17 APPLICATION.

10:33AM 18 NOW, THERE'S ALSO ACTUAL POSSESSION. I ACTUALLY
10:33AM 19 POSSESS IT RIGHT NOW.

10:33AM 20 AND CONSTRUCTIVE POSSESSION. IF I GIVE IT TO
10:33AM 21 MS. BATSON WITH THE RIGHT TO RECLAIM IT AT SOME LATER
10:34AM 22 POINT, SHE HAS ACTUAL POSSESSION OF THE ITEM, BUT I RETAIN
10:34AM 23 CONSTRUCTIVE POSSESSION OF THE ITEM, BECAUSE I CAN RECLAIM IT
10:34AM 24 FROM HER AT SOME POINT.

10:34AM 25 ANY QUESTIONS ABOUT THOSE DEFINITIONS OR EXPLANATIONS

VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

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1 OF "POSSESSION"? AND THEY TYPICALLY BECOME IMPORTANT IN THIS
2 TYPE OF A CASE. ANY QUESTIONS? ALL RIGHT.

3 YOU MAY BE ASKING YOURSELF--WE'VE TALKED ABOUT
4 "CONSPIRACY" HERE, AND USED THAT WORD--"WHAT IS A CONSPIRACY?"
5 WELL, THE JUDGE WILL TELL YOU IN THE INSTRUCTIONS THAT A
6 CONSPIRACY IS A PARTNERSHIP IN CRIME. IT'S A PARTNERSHIP
7 TO COMMIT AN ILLEGAL ACT. AND THE JUDGE WILL GIVE YOU SOME
8 SPECIFIC DEFINITIONS--A SPECIFIC DEFINITION AS TO WHAT A
9 CONSPIRACY IS. AND I ANTICIPATE THAT IN THE CHARGE, OR IN
10 THE INSTRUCTIONS, SORRY, THAT THE JUDGE WILL TELL YOU THAT A
11 CONSPIRACY IS AN AGREEMENT--THERE'S THAT WORD AGAIN--BETWEEN
12 TWO OR MORE PERSONS TO JOIN TOGETHER TO ACCOMPLISH SOME
13 UNLAWFUL PURPOSE. A PARTNERSHIP IN CRIME.

14 AND HE'LL ALSO TELL YOU THAT ONE MAY BE A MEMBER OF
15 A CONSPIRACY WITHOUT KNOWING ALL OF THE DETAILS OF THE UNLAWFUL
16 SCHEME OR THE IDENTITIES OF ALL THE OTHER ALLEGED CONSPIRATORS.
17 THAT'S A MOUTHFUL. LET ME BREAK IT DOWN. ONE MAY BE A MEMBER
18 OF A CONSPIRACY WITHOUT KNOWING ALL THE DETAILS OF THAT
19 UNLAWFUL SCHEME OR THE IDENTITIES OF ALL THE OTHER
20 COCONSPIRATORS.

21 LET ME GIVE YOU A HYPOTHETICAL. LET'S SAY AGENT
22 MATA IS SELLING DRUGS AND HE SAYS, "I HAVE A KILO OF COCAINE
23 THAT I WANT TO SELL." HE GOES TO MS. BATSON AND SAYS, "I HAVE
24 A KILO OF COCAINE THAT I'M LOOKING TO SELL. DO YOU HAVE ANY
25 CUSTOMERS?"

VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

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10:35AM 1 SHE SAYS, "I MAY HAVE A CUSTOMER. I'LL AGREE TO BUY
10:35AM 2 THAT COCAINE FROM YOU. HOW MUCH ARE YOU ASKING FOR IT?"

10:35AM 3 "I WANT \$10,000 FOR THAT KILO OF COCAINE."

10:35AM 4 SHE AGREES THAT SHE'S GONNA GO TRY TO FIND A
10:35AM 5 CUSTOMER.

10:35AM 6 SHE THEN COMES TO ME AND SAYS, "HEY, I'VE GOT A KILO
10:36AM 7 OF COCAINE THAT I'M INTERESTED IN SELLING. ARE YOU INTERESTED?"

10:36AM 8 AND I SAY, "YES, I'M INTERESTED. HOW MUCH ARE YOU
10:36AM 9 SELLING IT FOR?"

10:36AM 10 "I'LL SELL IT TO YOU FOR \$15,000," MAKING A
10:36AM 11 5,000-DOLLAR PROFIT.

10:36AM 12 NOW, CLEARLY, SHE'S IN A CONSPIRACY, BECAUSE SHE HAS
10:36AM 13 AN AGREEMENT TO SELL THE COCAINE WITH AGENT MATA, AND SHE'S IN
10:36AM 14 A CONSPIRACY WITH ME BECAUSE WE HAVE AN AGREEMENT THAT SHE'S
10:36AM 15 GONNA SELL IT TO ME, BUT I ALSO HAVE A CONSPIRACY--I'M ALSO IN
10:36AM 16 A CONSPIRACY WITH AGENT MATA. EVEN THOUGH I DON'T KNOW WHO HE
10:36AM 17 IS, EVEN THOUGH I DON'T KNOW THAT HE'S SELLING THE COCAINE
10:36AM 18 TO MS. BATSON FOR \$10,000, WE'RE IN A CONSPIRACY TOGETHER.
10:36AM 19 THAT'S WHAT THAT MEANS. I DON'T HAVE TO KNOW THE IDENTITIES
10:36AM 20 OF ALL THE COCONSPIRATORS, AND I DON'T HAVE TO KNOW ALL THE
10:36AM 21 DETAILS OF THE SCHEME.

10:36AM 22 WHY IS THAT IMPORTANT? THINK ABOUT THAT LOGICALLY.
10:36AM 23 WHY IS THAT IMPORTANT AND WHY IS THE LAW THAT WAY? BECAUSE IF
10:36AM 24 AGENT MATA KNEW THAT I WAS WILLING TO PAY \$15,000 FOR THAT SAME
10:36AM 25 KILO, WHAT WOULD HE DO? HE WOULD CUT MS. BATSON TOTALLY OUT OF

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10:37AM 1 THAT DEAL AND HE WOULD COME STRAIGHT TO ME. THAT'S WHY THE
10:37AM 2 LAW IS THAT WAY. COMMON SENSE.

10:37AM 3 ANY QUESTIONS? ANY OPINIONS? ANY CONCERNS ABOUT
10:37AM 4 THE LAW OF CONSPIRACY? OKAY.

10:37AM 5 LET'S SAY THAT AGENT MATA FINDS OUT WHO I AM DURING
10:37AM 6 THE TIME THAT WE'RE DEALING AND HE COMES TO ME AND HE SELLS ME
10:37AM 7 FIVE KILOGRAMS OF COCAINE. MS. BATSON IS STILL INVOLVED IN THE
10:37AM 8 CONSPIRACY. CAN MS. BATSON BE HELD ACCOUNTABLE FOR THOSE FIVE
10:37AM 9 KILOGRAMS EVEN THOUGH SHE HAD NOTHING TO DO WITH IT? YES, AS
10:37AM 10 LONG AS SHE WAS STILL IN THE CONSPIRACY. YES.

10:37AM 11 ANY QUESTIONS ABOUT THAT?

10:37AM 12 NOW, THE OTHER DEFINITION THAT WILL ACCOMPANY THAT
10:37AM 13 IS THAT IF THE DEFENDANT UNDERSTANDS THE UNLAWFUL NATURE OF THE
10:37AM 14 PLAN OR SCHEME AND INTENTIONALLY JOINS IN THAT PLAN OR SCHEME
10:37AM 15 ON ONE OCCASION--ON ONE OCCASION--THAT IS SUFFICIENT TO CONVICT
10:38AM 16 HIM OR HER FOR THE CONSPIRACY EVEN THOUGH THE DEFENDANT PLAYED
10:38AM 17 ONLY A MINOR ROLE. SO EVEN IF SHE DID IT ONE TIME OR WE DID IT
10:38AM 18 ONE TIME, THAT'S ENOUGH.

10:38AM 19 MINOR ROLE? WHAT IF AGENT MATA SAYS, "I'VE GOT
10:38AM 20 SOME COCAINE TO SELL," AND SHE SAYS, "I KNOW SOMEBODY, I'LL
10:38AM 21 INTRODUCE YOU TO HIM," AND SHE MAKES THAT INTRODUCTION, AND
10:38AM 22 I DEAL DIRECTLY WITH AGENT MATA? DO WE HAVE A CONSPIRACY?
10:38AM 23 YES. SHE ONLY PLAYED A MINOR ROLE. SHE FACILITATED THE
10:38AM 24 INTRODUCTION SO THE TRANSACTION COULD OCCUR. THAT'S A MINOR
10:38AM 25 ROLE.

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10:38AM 1 ANY QUESTIONS OR CONCERNS ABOUT THAT? OKAY.

10:38AM 2 THAT'S THE THINGS THAT I ANTICIPATE WILL BE IN THE
10:38AM 3 CHARGE, OR IN THE INSTRUCTIONS.

10:38AM 4 WHAT YOU WON'T SEE IN THE INSTRUCTIONS AND WHAT'S
10:38AM 5 NOT REQUIRED IN A CONSPIRACY IS A FORMAL AGREEMENT. THIS IS
10:38AM 6 NOT LIKE BUYING A HOUSE. THIS IS NOT LIKE BUYING A CAR. THERE
10:39AM 7 IS NOT GONNA BE A FORMAL CONTRACT WHERE EVERYONE SIGNS ON THE
10:39AM 8 DOTTED LINE. THAT'S NOT WHAT YOU'LL FIND HERE. BECAUSE IT'S
10:39AM 9 AN ILLEGAL ACT. SO THERE WON'T BE THAT DOCUMENT.

10:39AM 10 IS THERE ANYONE HERE WHO FEELS THAT THEY HAVE TO
10:39AM 11 HAVE SOMETHING LIKE THAT, SOMETHING IN WRITING OR SOME FORMAL
10:39AM 12 AGREEMENT, BEFORE YOU FIND SOMEONE GUILTY OF A CONSPIRACY TO
10:39AM 13 DISTRIBUTE ILLEGAL DRUGS? OKAY.

10:39AM 14 I TALKED TO YOU ABOUT THE FACT THAT THEY DON'T
10:39AM 15 HAVE TO KNOW ALL THE DETAILS, THEY DON'T HAVE TO KNOW ALL THE
10:39AM 16 IDENTITIES, AND THEY DON'T HAVE TO BE SUCCESSFUL. REMEMBER THE
10:39AM 17 HYPOTHETICAL OF THE BANK ROBBERY? SO THAT'S A LAW THAT WILL BE
10:39AM 18 INSTRUCTED--WILL BE GIVEN TO YOU IN THE INSTRUCTIONS, THAT'S A
10:39AM 19 LAW THAT YOU WILL HAVE TO FOLLOW.

10:39AM 20 NOW, IF YOU ARE SELECTED TO BE A JUROR, I TOLD YOU
10:39AM 21 YOU HAD TWO RESPONSIBILITIES: FIRST, FOLLOW THE LAW; SECOND,
10:39AM 22 YOU'LL HAVE TO DETERMINE THE CREDIBILITY OF THE WITNESSES.
10:39AM 23 YOU AND YOU ALONE DECIDE WHO IS TELLING YOU THE TRUTH, NOT THE
10:39AM 24 JUDGE, NOT THE GOVERNMENT, NOT DEFENSE COUNSEL. YOU DECIDE,
10:40AM 25 YOU AND YOU ALONE. THE JUDGE WILL GIVE YOU SOME DIRECTION AS

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10:40AM 1 TO WHAT TO LOOK FOR, BUT AT THE END OF THE DAY, YOU GET TO
10:40AM 2 DECIDE WHAT YOU BELIEVE. AND YOU CAN BELIEVE ALL OF WHAT A
10:40AM 3 WITNESS TELLS YOU, PART OF WHAT A WITNESS TELLS YOU OR NONE
10:40AM 4 OF WHAT A WITNESS TELLS YOU. YOU MAKE THAT CALL. AND THAT
10:40AM 5 IS ONE OF YOUR RESPONSIBILITIES.

10:40AM 6 NOW, HOW DO YOU DO THAT? WELL, YOU DO THAT EVERY
10:40AM 7 SINGLE DAY WHEN YOU'RE NOT IN THIS COURTROOM. YOU DO THAT BY
10:40AM 8 USING YOUR COMMON SENSE. YOU DON'T LEAVE YOUR COMMON SENSE
10:40AM 9 OUTSIDE OF THIS COURTROOM; YOU BRING THAT ALONG WITH YOU AND
10:40AM 10 YOU APPLY THAT COMMON SENSE.

10:40AM 11 ANOTHER HYPOTHETICAL. LET'S SAY THAT THERE ARE TWO
10:40AM 12 CHILDREN AND THEY'RE ROUGHHOUSING, THEY'RE PLAYING, AND THEY
10:40AM 13 ACCIDENTALLY TIP OVER A LAMP AND THEY BOTH COME RUNNING TO YOU
10:40AM 14 AND THEY POINT THE FINGER AT ONE ANOTHER. I KNOW THAT'S A
10:40AM 15 SIMPLE HYPOTHETICAL. BUT WHAT DO YOU DO AS AN ADULT? YOU
10:40AM 16 LISTEN TO WHAT THEY ARE TELLING YOU, YOU LISTEN TO THEIR
10:41AM 17 ACCOUNT, YOU GO AND YOU INVESTIGATE, YOU DETERMINE WHETHER WHAT
10:41AM 18 THEY ARE TELLING YOU MAKES REASON AND COMMON SENSE, AND THEN
10:41AM 19 YOU REACH A CONCLUSION AS TO WHAT THE TRUTH IS. THAT'S WHAT
10:41AM 20 YOU DO HERE AS A JUROR. IS THERE ANYONE HERE WHO FEELS THAT
10:41AM 21 YOU WOULDN'T BE ABLE TO DO THAT IN THIS COURTROOM, THAT YOU
10:41AM 22 WOULDN'T CARRY YOUR COMMON SENSE INTO THIS COURTROOM AND DO
10:41AM 23 EXACTLY THAT? LISTEN TO THE TOTALITY OF THIS CASE AND LISTEN
10:41AM 24 TO ALL OF THE WITNESSES BEFORE FORMING YOUR OPINION AS TO
10:41AM 25 WHETHER SOMEONE IS GUILTY OR NOT GUILTY. THAT'S WHAT YOU

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10:41AM 1 ARE HERE FOR. ALL RIGHT. SO THAT'S YOUR SECOND RESPONSIBILITY.

10:41AM 2 NOW, WHAT IS EVIDENCE? THERE'S DIFFERENT TYPES

10:41AM 3 OF EVIDENCE:

10:41AM 4 THERE'S TESTIMONIAL EVIDENCE. EVIDENCE THAT COMES
10:41AM 5 FROM THE WITNESS STAND, PEOPLE TESTIFYING, THAT'S TESTIMONIAL
10:41AM 6 EVIDENCE.

10:41AM 7 THERE'S PHYSICAL EVIDENCE. THE DRUGS THEMSELVES
10:42AM 8 THAT WERE SEIZED, THE SCALES, THE PACKAGING, TANGIBLE STUFF,
10:42AM 9 THAT'S PHYSICAL EVIDENCE.

10:42AM 10 THERE'S DIRECT EVIDENCE THAT SOMEONE WHO WAS THERE
10:42AM 11 SAW WHAT HAPPENED AND COMES INTO THIS COURTROOM AND TESTIFIES
10:42AM 12 AND THEY HAVE DIRECT KNOWLEDGE OF WHAT HAPPENED.

10:42AM 13 AND THEN THERE'S CIRCUMSTANTIAL EVIDENCE. THAT'S
10:42AM 14 PROBABLY THE HARDEST ONE OF ALL OF THEM, CIRCUMSTANTIAL
10:42AM 15 EVIDENCE. CIRCUMSTANTIAL EVIDENCE IS A CHAIN OF EVENTS THAT
10:42AM 16 LEAD YOU TO A REASONABLE CONCLUSION. A CHAIN OF EVENTS THAT
10:42AM 17 LEADS YOU TO A REASONABLE CONCLUSION. AND I ANTICIPATE
10:42AM 18 THAT THE JUDGE WILL TELL YOU IN HIS JURY INSTRUCTIONS THAT
10:42AM 19 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE CARRY THE SAME
10:42AM 20 AMOUNT OF WEIGHT IN THIS COURTROOM. THERE IS NO LEGAL
10:42AM 21 DISTINCTION BETWEEN THE TWO. YOU CAN FIND SOMEBODY GUILTY
10:42AM 22 BASED SOLELY ON CIRCUMSTANTIAL EVIDENCE IF YOU BELIEVE THAT
10:42AM 23 CIRCUMSTANTIAL EVIDENCE BEYOND A REASONABLE DOUBT AND THAT
10:42AM 24 CIRCUMSTANTIAL EVIDENCE PROVES EACH ONE OF THOSE ELEMENTS THAT
10:42AM 25 I TALKED ABOUT EARLIER.

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10:42AM 1 SO WHAT IS CIRCUMSTANTIAL EVIDENCE? WELL, LET ME
10:42AM 2 GIVE YOU ANOTHER HYPOTHETICAL. LET'S SAY THIS MORNING WHEN YOU
10:42AM 3 WALKED IN IT WAS CLOUDY AND OVERCAST, BUT IT WASN'T RAINING.
10:42AM 4 YOU COME INTO THIS COURTROOM AND YOU SIT DOWN. AS YOU ARE
10:43AM 5 WAITING FOR COURT TO START, YOU HEAR THUNDER AND YOU SEE
10:43AM 6 FLASHES OF LIGHT COMING THROUGH THE WINDOWS, AND THEN SOON
10:43AM 7 THEREAFTER SOMEONE WALKS INTO THE COURTROOM, THEY HAVE AN
10:43AM 8 UMBRELLA AND THEY HAVE A RAINCOAT. THE UMBRELLA IS WET,
10:43AM 9 THE RAINCOAT IS WET. A CHAIN OF EVENTS THAT LEAD YOU TO A
10:43AM 10 REASONABLE CONCLUSION. WHAT CAN YOU NOW CONCLUDE BY THE FACT
10:43AM 11 THAT IT WAS CLOUDY, THAT YOU HEARD THUNDER AND THAT YOU SAW
10:43AM 12 FLASHES OF LIGHT AND THAT A PERSON CAME INTO THE COURTROOM THAT
10:43AM 13 WAS WET, WEARING A RAINCOAT AND AN UMBRELLA? THAT IT'S NOW
10:43AM 14 RAINING OUTSIDE. THAT'S CIRCUMSTANTIAL EVIDENCE. AND IT
10:43AM 15 CARRIES THE SAME WEIGHT AS DIRECT EVIDENCE.

10:43AM 16 IS THERE ANYONE HERE WHO FEELS THAT THEY WOULDN'T
10:43AM 17 BE ABLE TO ACCEPT THAT OR THEY WOULDN'T BE ABLE TO GIVE THAT
10:43AM 18 CIRCUMSTANTIAL EVIDENCE THE SAME WEIGHT?

10:43AM 19 NOW LET ME TALK BRIEFLY ABOUT WHAT WE TYPICALLY FIND
10:44AM 20 IN A DRUG CASE: COCONSPIRATOR TESTIMONY, CODEFENDANT TESTIMONY
10:44AM 21 OR CONFLICT TESTIMONY. WHAT THAT MEANS IS THE INDIVIDUALS THAT
10:44AM 22 ARE INVOLVED IN THE OFFENSE ALONG WITH THE ALLEGED DEFENDANTS
10:44AM 23 COMMITTING THE ACT THAT THEY'RE ON TRIAL FOR, INDIVIDUALS THAT
10:44AM 24 HAVE ALREADY PLED GUILTY AND ENTERED INTO A PLEA AGREEMENT WITH
10:44AM 25 THE GOVERNMENT AND AS PART OF THEIR PLEA AGREEMENT THEY HAVE TO

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10:44AM 1 TESTIFY. NOW, THERE ARE SOME PEOPLE WHO FEEL NO MATTER HOW
10:44AM 2 MUCH CORROBORATION THERE IS ABOUT THAT PERSON'S TESTIMONY,
10:44AM 3 THEY'RE JUST NOT GONNA BELIEVE IT BECAUSE THEY'RE AN ACCOMPLICE
10:44AM 4 OR BECAUSE THEY'RE A CODEFENDANT. AND IF YOU FEEL THAT WAY,
10:44AM 5 THAT'S PERFECTLY FINE. BUT NOW IS THE TIME TO TELL US THAT.
10:44AM 6
10:44AM 7 AND BEFORE YOU DO, LET ME GIVE YOU ANOTHER
10:44AM 8 HYPOTHETICAL AS TO WHY THE LAW IS WHAT IT IS, WHICH STATES--
10:44AM 9 THE JUDGE WILL TELL YOU THAT AN ALLEGED ACCOMPLICE OR
10:44AM 10 COCONSPIRATOR, INCLUDING ONE WHO HAS ENTERED INTO A PLEA
10:45AM 11 AGREEMENT WITH THE GOVERNMENT, IS NOT PROHIBITED FROM
10:45AM 12 TESTIFYING. AND THE TESTIMONY OF SUCH A WITNESS MAY ALONE
10:45AM 13 BE OF SUFFICIENT WEIGHT TO SUSTAIN A VERDICT OF "GUILTY." IF
10:45AM 14 THE TESTIMONY OF THE ALLEGED ACCOMPLICE OR COCONSPIRATOR IS
10:45AM 15 BELIEVED BEYOND A REASONABLE DOUBT AND HIS TESTIMONY PROVES
10:45AM 16 EACH OF THE ELEMENTS OF THE OFFENSE, THEN HIS TESTIMONY ALONE
10:45AM 17 MAY BE SUFFICIENT TO FIND THAT DEFENDANT GUILTY. ALL RIGHT?
10:45AM 18 SO THAT'S TELLING YOU THAT IF YOU BELIEVE THAT INDIVIDUAL, EVEN
10:45AM 19 THOUGH HE'S A COCONSPIRATOR, EVEN THOUGH HE'S A CODEFENDANT,
10:45AM 20 EVEN THOUGH HE HAS A PLEA AGREEMENT, AND YOU BELIEVE HIS STORY
10:45AM 21 OR HIS ACCOUNT OF WHAT OCCURRED BEYOND A REASONABLE DOUBT AND
10:45AM 22 IT PROVES THE THREE ELEMENTS THAT I TALKED TO YOU PREVIOUSLY
10:45AM 23 ABOUT, THEN THAT'S SUFFICIENT FOR YOU TO FIND THE DEFENDANT
GUILTY.

10:45AM 24 HERE'S WHY THAT'S IMPORTANT: LET'S SAY I GO OVER
10:45AM 25 TO MS. BATSON AND I WHISPER SOMETHING IN HER EAR AND I GIVE

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10:45AM 1 HER SOMETHING IN HER HAND. WHO IS IN THE BEST POSITION TO COME
10:46AM 2 INTO THIS COURTROOM AND TELL YOU WHAT I WHISPERED TO HER IN
10:46AM 3 HER EAR AND WHAT I HANDED TO HER IN HER HAND? THE INDIVIDUALS
10:46AM 4 THAT WERE INVOLVED, THE ONES THAT WERE DIRECTLY INVOLVED. AND,
10:46AM 5 YEAH, YOU HAVE TO JUDGE THEIR CREDIBILITY. AND, YES, THEY'LL
10:46AM 6 HAVE CRIMINAL HISTORIES. AND, YES, THEY'LL HAVE PLED GUILTY TO
10:46AM 7 THIS OFFENSE. BUT YOU HAVE TO DETERMINE THEIR CREDIBILITY AND
10:46AM 8 YOU HAVE TO JUDGE THEIR CREDIBILITY BASED ON WHAT THEY ARE
10:46AM 9 TELLING YOU, BASED ON YOUR REASON AND COMMON SENSE.

10:46AM 10 IS THERE ANYONE HERE WHO FEELS THAT BECAUSE THEY'RE
10:46AM 11 COCONSPIRATORS, BECAUSE THEY'RE CODEFENDANTS OR BECAUSE THEY
10:46AM 12 HAVE A PLEA AGREEMENT WITH THE GOVERNMENT THAT YOU WOULD NOT
10:46AM 13 BE ABLE TO LISTEN TO THEIR TESTIMONY, YOU WOULD JUST DISREGARD
10:46AM 14 THEM RIGHT FROM THE GET-GO?

10:46AM 15 AND IN REGARDS TO PLEA AGREEMENTS, I ANTICIPATE THAT
10:46AM 16 THE JUDGE WILL TELL YOU THAT PLEA-BARGAINING, AS IT IS CALLED,
10:46AM 17 HAS BEEN APPROVED AS LAWFUL AND PROPER, AND IT IS EXPRESSLY
10:46AM 18 PROVIDED FOR IN THE RULES OF THIS COURT. SO THERE'S NOTHING
10:46AM 19 WRONG WITH SOMEONE HAVING A PLEA AGREEMENT WITH THE GOVERNMENT.
10:47AM 20 THERE'S NO BAR TO THEM TESTIFYING JUST BECAUSE THEY HAVE
10:47AM 21 A PLEA AGREEMENT.

10:47AM 22 NOW, EARLIER I TALKED TO YOU ABOUT THE ELEMENTS
10:47AM 23 AND THAT THE GOVERNMENT'S BURDEN WAS TO PROVE IT BEYOND A
10:47AM 24 REASONABLE DOUBT. THE JUDGE IN THE INSTRUCTIONS WILL GIVE YOU
10:47AM 25 THE SPECIFIC DEFINITION THAT APPLIES. THE JUDGE WILL TELL YOU

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10:47AM 1 THAT REASONABLE DOUBT IS A DOUBT BASED ON REASON AND COMMON
10:47AM 2 SENSE AFTER A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE
10:47AM 3 EVIDENCE IN THE CASE. IT IS A KIND OF DOUBT THAT WOULD MAKE A
10:47AM 4 REASONABLE PERSON HESITATE TO ACT IN THE MOST IMPORTANT OF HIS
10:47AM 5 OWN AFFAIRS.

10:47AM 6 AND WHAT I WOULD FOCUS YOU TO IS REASONABLE DOUBT IS
10:47AM 7 COMMON SENSE AFTER YOU LISTEN TO THE TOTALITY OF THE CASE AND
10:47AM 8 YOU APPLY YOUR REASON AND COMMON SENSE TO THE ELEMENTS, LADIES
10:47AM 9 AND GENTLEMEN. REASON AND COMMON SENSE. IS THERE ANYONE HERE
10:47AM 10 WHO WOULD NOT BE ABLE TO FOLLOW THAT DEFINITION OF "REASONABLE
10:48AM 11 DOUBT"?

10:48AM 12 AND I'LL TELL YOU WHAT REASONABLE DOUBT IS NOT.
10:48AM 13 WE HEAR THESE TERMS ON TV SHOWS ALL THE TIME. "I'M GONNA PROVE
10:48AM 14 THIS CASE TO YOU BEYOND ALL DOUBT." NO, THAT'S NOT THE BURDEN
10:48AM 15 OF PROOF HERE. "I'M GONNA PROVE THIS CASE TO YOU BEYOND A
10:48AM 16 SHADOW OF A DOUBT." NO, THAT'S NOT THE BURDEN HERE. BECAUSE,
10:48AM 17 OBVIOUSLY, THE ONLY WAY I COULD PROVE THIS CASE TO YOU BEYOND
10:48AM 18 ALL DOUBT OR BEYOND A SHADOW OF A DOUBT IS IF YOU WERE THERE
10:48AM 19 AND YOU SAW WHAT HAPPENED. AND IF THAT WERE THE CASE, THEN YOU
10:48AM 20 WOULD BE A WITNESS IN THIS CASE AND YOU COULD NOT SERVE AS A
10:48AM 21 JUROR.

10:48AM 22 THE BURDEN HERE IS "BEYOND A REASONABLE DOUBT."
10:48AM 23 AND WE ACCEPT THAT BURDEN. IS THERE ANYONE HERE WHO WOULD
10:48AM 24 HOLD US TO A HIGHER BURDEN? YOU WOULD SAY THAT "IN ORDER FOR
10:48AM 25 ME TO FIND THESE DEFENDANTS GUILTY, YOU HAVE TO PROVE THIS

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10:48AM 1 CASE BEYOND ALL DOUBT" OR "YOU HAVE TO PROVE THIS CASE BEYOND
10:48AM 2 A SHADOW OF A DOUBT"? IS THERE ANYONE HERE WHO WOULD HOLD
10:48AM 3 THE GOVERNMENT TO THAT HIGHER LEVEL? OKAY.

10:49AM 4 NOW, WE TALKED ABOUT--AND THERE'S ANOTHER TERM THAT
10:49AM 5 WE HEAR A LOT ABOUT ON TV: "THE PRESUMPTION OF INNOCENCE."
10:49AM 6 EVERYONE IS PRESUMED INNOCENT. BUT IT IS WITHIN THE LAW WHAT
10:49AM 7 WE CALL "A REBUTTABLE PRESUMPTION." IT ONLY LASTS AS LONG
10:49AM 8 AS YOU HAVEN'T HEARD ANY EVIDENCE AND YOU DON'T BELIEVE THE
10:49AM 9 EVIDENCE OF THE ELEMENTS.

10:49AM 10 AS THE DEFENDANTS SIT HERE RIGHT NOW, BECAUSE YOU
10:49AM 11 HAVEN'T HEARD ANY EVIDENCE, THEY'RE PRESUMED INNOCENT. SO IF
10:49AM 12 WE ASK YOU TO VOTE RIGHT NOW, THEY'RE INNOCENT, BECAUSE YOU
10:49AM 13 HAVEN'T HEARD ANY EVIDENCE. THE GOVERNMENT HASN'T PRESENTED
10:49AM 14 ANY EVIDENCE. SO RIGHT NOW YOU PRESUME THEM INNOCENT.

10:49AM 15 BUT AS THE GOVERNMENT PRESENTS YOU EVIDENCE AND THE
10:49AM 16 GOVERNMENT PRESENTS YOU WITNESSES AND YOU BELIEVE THAT EVIDENCE
10:49AM 17 AND YOU BELIEVE THAT WITNESS, THAT PRESUMPTION IS REBUTTED.
10:49AM 18 IS THERE ANYONE HERE WHO HAS A PROBLEM WITH THAT? OKAY.

10:49AM 19 WE ALSO HAVE A CONSTITUTIONAL RIGHT TO REMAIN SILENT.
10:50AM 20 WE ALL KNOW THAT. WE'VE ALL HEARD THAT ON TV SHOWS, ALSO. WE
10:50AM 21 ALL HAVE A CONSTITUTIONAL RIGHT TO REMAIN SILENT. AND SO DO
10:50AM 22 THESE DEFENDANTS. THEY DON'T HAVE TO TESTIFY IF THEY CHOOSE
10:50AM 23 NOT TO. AND I'M SURE DEFENSE COUNSEL WILL COVER THAT WITH YOU
10:50AM 24 MORE THOROUGHLY.

10:50AM 25 BUT WHAT I WANT TO ADDRESS TO YOU IS: WE CAN'T

VOIR DIRE EXAMINATION ON BEHALF OF THE GOVERNMENT

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10:50AM 1 FORCE THEM TO TESTIFY. IF THEY CHOOSE NOT TO TESTIFY, WE CAN'T
10:50AM 2 FORCE THEM TO TESTIFY. BUT IF THEY DO DECIDE TO TESTIFY, THEN
10:50AM 3 YOU HAVE TO JUDGE THEIR CREDIBILITY LIKE YOU WOULD ANY OTHER
10:50AM 4 WITNESS. YOU WOULD LOOK AT THEIR DEMEANOR, YOU WOULD LOOK AT
10:50AM 5 THEIR MOTIVE AND BIAS FOR TESTIFYING A CERTAIN WAY. DO THEY
10:50AM 6 STAND TO GAIN OR LOSE SOMETHING? BUT, FINALLY, YOU WOULD
10:50AM 7 DETERMINE WHETHER THEIR ACCOUNT MADE REASON AND COMMON SENSE.
10:50AM 8 WE COME BACK TO THAT. REASON AND COMMON SENSE. DOES IT MAKE
10:50AM 9 REASON AND COMMON SENSE?

10:51AM 10 SO IS THERE ANYONE HERE WHO WOULD HOLD IT AGAINST
10:51AM 11 THE GOVERNMENT IF THEY DID NOT CALL THE DEFENDANT TO TESTIFY?
10:51AM 12 BECAUSE WE'RE NOT ABLE TO. OKAY.

10:51AM 13 THAT'S JUST ABOUT ALL THAT I WANTED TO COVER IN
10:51AM 14 REGARDS TO THE LAW.

10:51AM 15 THIS IS A DRUG CASE. AND ON PRIOR PANELS I'VE
10:51AM 16 ASKED THE QUESTION ABOUT LEGALIZATION OF DRUGS. AND THERE'S
10:51AM 17 DIFFERENT VIEWPOINTS. OBVIOUSLY, THIS IS A METHAMPHETAMINE
10:51AM 18 CASE. BUT THERE ARE SOME PEOPLE WHO FEEL THAT WE SHOULD
10:51AM 19 LEGALIZE MARIJUANA FOR MEDICATION PURPOSES--FOR MEDICAL
10:51AM 20 PURPOSES. AND IF YOU FEEL THAT WAY, THAT'S YOUR OPINION. IS
10:51AM 21 THERE ANYONE HERE WHO FEELS THAT WAY, THAT WE SHOULD LEGALIZE
10:51AM 22 MARIJUANA FOR MEDICAL PURPOSES? OKAY. WE'LL TAKE YOUR NUMBERS
10:51AM 23 DOWN. 2, 12, 15, 10, 26, 29, 23, 37, 35, 47 AND 46. THANK
10:52AM 24 YOU FOR RAISING YOUR CARDS.

10:52AM 25 BUT THE QUESTION--THE FOLLOW-UP QUESTION I WOULD

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT SALAZAR

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1 MAKE TO YOU: DOES THAT JUST APPLY TO MARIJUANA? IS THERE
2 ANYONE HERE WHO FEELS THAT METHAMPHETAMINE OR OTHER DRUGS
3 SHOULD BE LEGALIZED THE SAME WAY? IF YOU FEEL THAT WAY, THAT'S
4 FINE. OKAY.

5 SO I WOULD ASSUME THAT THOSE OF YOU WHO RAISED
6 YOUR CARDS WERE ONLY REFERRING TO MARIJUANA AND FOR MEDICINAL
7 PURPOSES.

8 ALL RIGHT. THANK YOU, LADIES AND GENTLEMEN.

9 THE COURT: OKAY. THANK YOU, MR. GONZALEZ.

10 LADIES AND GENTLEMEN, WOULD YOU PLEASE GIVE YOUR
11 ATTENTION NOW TO MR. KEMP ON BEHALF OF MR. SALAZAR.

12 MR. KEMP.

13 VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT SALAZAR

14 MR. KEMP: GOOD MORNING.

15 UNLIKE MR. GONZALEZ, I'M NOT GOING TO BE QUITE SO
16 NICE AND JUST ASK FOR HANDS. AS MR. GONZALEZ SAID, THIS IS OUR
17 OPPORTUNITY TO ASK YOU QUESTIONS AND TO HEAR YOUR RESPONSES, TO
18 KIND OF GET TO KNOW YOU. AND, YOU KNOW, THIS IS A VERY LIMITED
19 TIME THAT WE HAVE TO BE ABLE TO DO SO. SO I THINK THAT IT'S
20 OBVIOUSLY A VERY IMPORTANT PROCESS OR IMPORTANT ASPECT OF THIS
21 CASE.

22 NOW, YOU HEARD A LOT ABOUT THE LAW, A LOT ABOUT
23 BURDENS AND ELEMENTS AND, YOU KNOW, "BEYOND A REASONABLE DOUBT"
24 AND ALL THESE LEGAL TERMS, TERMS OF ART. BUT MR. GONZALEZ LAID
25 OUT THE ELEMENTS OF A CONSPIRACY.

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT SALAZAR

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10:53AM 1 Q. NOW, JUROR NUMBER 4, LET'S SAY HYPOTHETICALLY THAT THE
10:53AM 2 GOVERNMENT PROVES ELEMENT 1 AND 2 BUT IN YOUR MIND FAILS
10:53AM 3 TO PROVE ELEMENT NUMBER 3 BEYOND A REASONABLE DOUBT. AT THAT
10:53AM 4 POINT, WHAT IS YOUR VERDICT GOING TO BE?

10:53AM 5 THE COURT: MR. HAMMONDS, WE NEED TO GET A MICROPHONE
10:53AM 6 TO JUROR NUMBER 4.

10:54AM 7 A. WOULD YOU MIND REPEATING?

10:54AM 8 MR. KEMP: I CAN.

10:54AM 9 Q. LET'S SAY THIS IS A THREE-ELEMENT CASE. IT'S A
10:54AM 10 HYPOTHETICAL SITUATION, AND YOU ARE PICKED FOR A JURY FOR
10:54AM 11 THREE ELEMENTS, AND THE GOVERNMENT, IN YOUR MIND, PROVES BEYOND
10:54AM 12 A REASONABLE DOUBT ELEMENT NUMBER 1 AND ELEMENT NUMBER 2 BUT
10:54AM 13 FAILS TO PROVE ELEMENT NUMBER 3 BEYOND A REASONABLE DOUBT.
10:54AM 14 THERE'S JUST SOMETHING IN YOUR MIND THAT YOU THINK JUST DOESN'T
10:54AM 15 QUITE FIT RIGHT WITH YOU. IF YOU DIDN'T BELIEVE THAT THE
10:54AM 16 GOVERNMENT PROVED ELEMENT 3 BEYOND A REASONABLE DOUBT, WHAT
10:54AM 17 WOULD YOUR VERDICT BE?

10:54AM 18 A. I GUESS IT WOULD DEPEND ON--

10:54AM 19 THE COURT: MR. HAMMONDS, WOULD YOU TURN ON THE
10:54AM 20 MICROPHONE, PLEASE, SIR.

10:54AM 21 MR. KEMP: WHILE HE'S DOING THAT, I'M GOING TO GO
10:54AM 22 AHEAD AND CARRY ON, JUDGE, IF I COULD.

10:54AM 23 THE COURT: OKAY. IF YOU WANT TO SPEAK, GO AHEAD.

10:55AM 24 DO YOU STILL WANT JUROR NUMBER 4 TO ANSWER YOUR
10:55AM 25 QUESTION AS SOON AS WE GET A MICROPHONE THAT WORKS?

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT SALAZAR

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10:55AM 1 MR. KEMP: I'LL COME BACK TO HIM.

10:55AM 2 THE COURT: ALL RIGHT.

10:55AM 3 MR. KEMP: THANK YOU.

10:55AM 4 THAT TECHNOLOGY WORKS WONDERS, BUT SOMETIMES OUR
10:55AM 5 VOICE WORKS JUST AS GOOD.

10:55AM 6 Q. LIKE I SAID, THE GOVERNMENT HAS THE BURDEN OF PROVING
10:55AM 7 ALL OF THE ELEMENTS. NOW, THEIR BURDEN OF PROOF, AS OBVIOUSLY
10:55AM 8 THE JUDGE WILL INSTRUCT YOU ON, IS "BEYOND A REASONABLE DOUBT."
10:55AM 9 NOW, I KNOW THAT THERE WAS A SHOW OF HANDS ON SOME OF YOU WHO
10:55AM 10 HAD ACTUALLY SERVED ON A CRIMINAL JURY BEFORE. BUT HOW MANY OF
10:55AM 11 YOU HAVE SERVED ON A CIVIL JURY? SOMETHING INVOLVING MONEY OR
10:55AM 12 SOMETHING TO THAT EFFECT. JUROR NUMBER 4, 5, 16. JUROR NUMBER
10:55AM 13 16, IF WE COULD. NOW, IN THAT CIVIL JURY, I'M ASSUMING THAT
10:55AM 14 WAS SOMETHING ABOUT MONEY. CORRECT?

10:55AM 15 A. YES.

10:55AM 16 Q. AND DO YOU RECALL THE BURDEN OF PROOF IN THAT CASE?

10:56AM 17 A. PRETTY MUCH THE SAME AS REASONABLE DOUBT.

10:56AM 18 Q. WAS IT THE SAME? WAS IT BASICALLY 50/50?

10:56AM 19 A. NO. IT WAS A CASE OF A WOMAN TAKING A RING AND NOT
10:56AM 20 GIVING IT BACK WHEN THEY GOT DIVORCED AND ALL THAT.

10:56AM 21 Q. OKAY. SO, IN YOUR MIND, IT HAD TO BE PROOF BEYOND A
10:56AM 22 REASONABLE DOUBT IN ORDER TO BE ABLE TO FIND WHETHER THAT RING
10:56AM 23 SHOULD BE RETURNED, OR SOMETHING TO THAT EFFECT?

10:56AM 24 A. WELL, THERE WAS THAT, AND THE GENTLEMAN WAS THREATENING
10:56AM 25 THE LADY WITH VIOLENCE. THAT WAS THE ACTUAL CASE, WAS THE

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10:56AM 1 VIOLENCE PART OF IT.

10:56AM 2 Q. OKAY.

10:56AM 3 A. WHETHER HE MADE THE THREAT OR NOT.

10:56AM 4 Q. THANK YOU.

10:56AM 5 NOW, IN A CIVIL CASE, YOU HEAR THE TERM
10:56AM 6 "PREPONDERANCE OF THE EVIDENCE." THAT'S BASICALLY JUST
10:56AM 7 WEIGHING THE EVIDENCE 50/50, WHICH SIDE WEIGHS MORE, TO
10:56AM 8 DETERMINE WHAT YOU ARE GOING TO DO.

10:56AM 9 BUT REASONABLE DOUBT, ON THE OTHER HAND--REASONABLE
10:56AM 10 DOUBT IS HAVING TO PROVE A CASE SO THAT THERE'S NO REASONABLE
10:56AM 11 DOUBT IN YOUR MIND THAT THE GOVERNMENT HAS MET THEIR BURDEN OF
10:57AM 12 PROOF.

10:57AM 13 NOW, WHY IS REASONABLE DOUBT IMPORTANT? BECAUSE
10:57AM 14 THE LIFE, LIBERTY, PURSUIT OF HAPPINESS, YOU KNOW, THOSE
10:57AM 15 CATCHPHRASES THAT YOU HEAR THAT OUR CONSTITUTION AND OUR
10:57AM 16 SYSTEM IS FOUNDED ON, THAT'S WHAT'S AT STAKE HERE. IT'S
10:57AM 17 THE DEFENDANTS' FREEDOM, IT'S THEIR LIFE, IT'S THEIR LIBERTY
10:57AM 18 THAT'S AT STAKE. AND SO THAT'S WHY REASONABLE DOUBT IS
10:57AM 19 SO IMPORTANT.

10:57AM 20 NOW LET ME GIVE YOU A HYPOTHETICAL THAT I'M NOT
10:57AM 21 SMART ENOUGH TO THINK UP ON MY OWN SO I'M GOING TO HAVE TO
10:57AM 22 PLAGIARIZE SOMEBODY. IF YOU ARE AT YOUR HOUSE AND YOU HAVE A
10:57AM 23 CAT AND YOU PUT THIS CAT IN A BOX AND YOU PUT A MOUSE INSIDE
10:57AM 24 THE BOX WITH THE CAT, YOU CLOSE THE BOX UP, YOU TAPE IT UP, YOU
10:57AM 25 TIE IT UP REAL GOOD, YOU KNOW THAT THIS CAT AND THIS MOUSE ARE

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10:57AM 1 NOT GETTING OUT. YOU COME BACK AN HOUR LATER, YOU UNWIND
10:57AM 2 THE ROPE, UNDO THE TAPE, OPEN THE BOX. THERE'S THE CAT, BUT
10:58AM 3 THERE'S NO MOUSE. I THINK WE'RE ALL PROBABLY PRETTY FAMILIAR
10:58AM 4 WITH WHAT PROBABLY HAPPENED TO THE MOUSE. I THINK IT'S PRETTY
10:58AM 5 CLEAR THAT OBVIOUSLY THE CAT ATE THE MOUSE.

10:58AM 6 NOW LET ME TWIST THAT EXAMPLE JUST A LITTLE BIT.
10:58AM 7 YOU HAVE THE SAME BOX, THE SAME CAT, A COMPLETELY DIFFERENT
10:58AM 8 MOUSE. YOU PUT THE MOUSE AND THE CAT IN THE BOX, YOU CLOSE
10:58AM 9 IT UP, YOU TAPE IT UP, YOU TWINE IT UP, LEAVE IT ON THE TABLE.
10:58AM 10 YOU COME BACK IN AN HOUR AND YOU OPEN THE ROPE, YOU OPEN THE
10:58AM 11 TAPE AND OPEN THE BOX, AND THERE'S THE CAT, BUT THERE'S NO
10:58AM 12 MOUSE. BUT THEN YOU LOOK CLOSER AT THE BOX AND RIGHT THERE IN
10:58AM 13 A CORNER THERE'S A LITTLE HOLE IN IT JUST BIG ENOUGH FOR THE
10:58AM 14 MOUSE TO SQUEEZE OUT. THAT'S THE REASONABLE DOUBT THAT YOU
10:58AM 15 ARE LOOKING AT.

10:58AM 16 NOW, IF I COULD COME BACK TO JUROR NUMBER 4, PLEASE,
10:58AM 17 ONCE AGAIN, YOU ARE SITTING IN YOUR HYPOTHETICAL JUROR CHAIR
10:59AM 18 AND THE JUDGE INSTRUCTS YOU ON WHAT THE ELEMENTS OF THE CASE
10:59AM 19 ARE. HE INSTRUCTS YOU THAT THE GOVERNMENT HAS THE BURDEN TO
10:59AM 20 PROVE ALL OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT. IN
10:59AM 21 YOUR MIND, THE GOVERNMENT HAS PROVED THE FIRST ELEMENT BEYOND
10:59AM 22 A REASONABLE DOUBT, AND THE SECOND ELEMENT, BUT THE THIRD
10:59AM 23 ELEMENT, MAYBE THERE'S A LITTLE TINY HOLE IN THAT BOX. WOULD
10:59AM 24 YOU AS A JUROR--IN THAT CIRCUMSTANCE, WHAT WOULD YOUR VERDICT
10:59AM 25 BE?

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10:59AM 1 A. WELL, THE FACT IT WASN'T PROVEN SAYS THAT IT CAN'T
10:59AM 2 BE--IT CAN'T BE PROVEN.

10:59AM 3 Q. EVEN THOUGH IT'S JUST ONE ELEMENT?

10:59AM 4 A. JUST THE ONE ELEMENT.

10:59AM 5 Q. THANK YOU VERY MUCH.

10:59AM 6 NOW, I THINK THAT HOPEFULLY--HOPEFULLY MY
10:59AM 7 HYPOTHETICAL ILLUSTRATES, YOU KNOW, THE REASONABLE-DOUBT
10:59AM 8 PRINCIPLE, THAT--YOU KNOW, MR. GONZALEZ TOUCHED ON THE FACT
10:59AM 9 THAT THE DEFENDANTS ARE NOT REQUIRED TO TESTIFY. SOME OF THEM
10:59AM 10 MAY; SOME OF THEM MAY NOT. NOW, IS ANYBODY--DOES ANYBODY THINK
11:00AM 11 THAT SIMPLY BECAUSE A DEFENDANT CHOOSES NOT TO TESTIFY, THAT
11:00AM 12 THEY'RE AUTOMATICALLY GUILTY? AND IT'S OKAY IF YOU DO.
11:00AM 13 NOBODY? NO TAKERS?

11:00AM 14 WITH RESPECT TO THE DEFENDANTS TESTIFYING, THE WAY
11:00AM 15 OUR SYSTEM IS SET UP, IT'S THE GOVERNMENT'S BURDEN TO PROVE
11:00AM 16 ALL OF THE ELEMENTS. IF MYSELF, MR. WHALEN, MR. PETRAZIO CHOSE
11:00AM 17 TO, WE COULD ALL SIT OVER AT OUR TABLE WITH OUR ARMS CROSSED,
11:00AM 18 BECAUSE WE DON'T HAVE A BURDEN IN THIS CASE. DOES ANYBODY
11:00AM 19 BELIEVE THAT WE NEED TO PUT EVIDENCE ON TO TRY TO NEGATE THE
11:00AM 20 ELEMENTS OF THE GOVERNMENT? DOES ANYBODY BELIEVE THAT WE
11:00AM 21 NEED TO PROVE OUR CASE OR THAT WE HAVE SOME BURDEN? ANYBODY?

11:01AM 22 LET'S SEE IF I CAN GET SOME FOLKS TO TALK. I THINK--
11:01AM 23 JUROR NUMBER 5, I BELIEVE YOU INDICATED THAT YOU HAD SERVED ON
11:01AM 24 A CRIMINAL JURY BEFORE.

11:01AM 25 A. YES.

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11:01AM 1 Q. TELL ME, WAS THAT A STATE CASE?

11:01AM 2 A. I DON'T KNOW.

11:01AM 3 Q. WHERE WAS THE JURY AT?

11:01AM 4 A. IN COLLIN COUNTY.

11:01AM 5 Q. COLLIN COUNTY. WHAT TYPE OF CASE WAS IT?

11:01AM 6 A. IT WAS A GENTLEMAN WHO CAME FROM MEXICO, BOUGHT A
11:01AM 7 SOCIAL SECURITY CARD, AND THEN PROCEEDED TO USE THAT FOR
11:01AM 8 EMPLOYMENT.

11:01AM 9 Q. AND DID YOU REACH A VERDICT IN THAT CASE?

11:01AM 10 A. YES.

11:01AM 11 Q. AND WHAT WAS YOUR VERDICT IN THAT CASE?

11:01AM 12 A. GUILTY.

11:01AM 13 Q. AND YOU BELIEVE THAT THE GOVERNMENT, OR THE STATE IN
11:01AM 14 THAT CASE, PROVED ALL OF THEIR ELEMENTS?

11:01AM 15 A. YES.

11:01AM 16 Q. NOW, JUROR NUMBER 19, I BELIEVE YOU INDICATED YOU HAD
11:01AM 17 SOME CRIMINAL-JURY EXPERIENCE AS WELL.

11:01AM 18 A. YES, SIR.

11:01AM 19 Q. AND WHAT TYPE OF CASE WAS THAT?

11:02AM 20 A. SEXUAL ASSAULT OF A MINOR IN COLLIN COUNTY. OR, I'M
11:02AM 21 SORRY, DENTON COUNTY.

11:02AM 22 Q. IN DENTON COUNTY? AND DID YOU REACH A VERDICT IN THAT
11:02AM 23 CASE?

11:02AM 24 A. YES.

11:02AM 25 Q. IS THAT THE ONLY JURY THAT YOU HAVE EVER SERVED ON?

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11:02AM 1 A. YES.

11:02AM 2 Q. THANK YOU.

11:02AM 3 HAS ANYBODY--I KNOW THAT THERE WERE A HANDFUL OF
11:02AM 4 PEOPLE, I THINK MAYBE SEVEN OR EIGHT, THAT HAD SOME CRIMINAL
11:02AM 5 JURY-TRIAL EXPERIENCE BEFORE THIS ONE. HAS ANYONE EVER DEALT
11:02AM 6 WITH A DRUG CASE OR HAD A DRUG CASE THAT THEY WERE ON THE JURY?

11:02AM 7 39. JUROR 39, WHAT TYPE OF CASE WAS THAT?

11:02AM 8 A. UM, POSSESSION AND INTENT TO SELL COCAINE.

11:02AM 9 Q. COCAINE? WAS IT IN A STATE COURT OR IN FEDERAL COURT?

11:02AM 10 A. I THINK IT WAS A FEDERAL COURT IN LOS ANGELES.

11:02AM 11 Q. OKAY. AND DID YOU REACH A VERDICT IN THAT CASE?

11:02AM 12 A. [MOVING HEAD UP AND DOWN]

11:02AM 13 Q. WHAT DID YOU FIND IN THAT CASE?

11:02AM 14 A. GUILTY.

11:02AM 15 Q. WAS IT JUST ONE DEFENDANT?

11:02AM 16 A. NO, I THINK THERE WAS THREE.

11:02AM 17 Q. DID ANY OF THE DEFENDANTS TESTIFY?

11:03AM 18 A. I DON'T THINK SO, NO.

11:03AM 19 Q. IT'S BEEN A WHILE?

11:03AM 20 A. YEAH. LIKE ABOUT 19 YEARS AGO.

11:03AM 21 Q. THAT'S IT? NOW, DO YOU THINK, IN YOUR MIND, THAT IT
11:03AM 22 WOULD HAVE MADE A DIFFERENCE THAT IF THEY WOULD HAVE TESTIFIED,
11:03AM 23 THAT SOMEHOW THAT WOULD HAVE MADE A DIFFERENCE IN THE CASE?

11:03AM 24 A. NO.

11:03AM 25 Q. AFTER SEEING WHAT YOU SAW, THEN, DO YOU THINK THE

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11:03AM 1 DEFENDANTS IN THIS CASE SHOULD BE REQUIRED TO TESTIFY?

11:03AM 2 A. NO.

11:03AM 3 Q. THANK YOU.

11:03AM 4 JUROR NUMBER 12, YOU HAD ALSO BEEN ON A CRIMINAL
11:03AM 5 JURY IN A DRUG CASE?

11:03AM 6 A. YES.

11:03AM 7 Q. WHERE WAS THAT AT?

11:03AM 8 A. CLARK COUNTY, LAS VEGAS, NEVADA.

11:03AM 9 Q. WHAT WAS YOUR VERDICT IN THAT CASE?

11:03AM 10 A. IT WAS GUILTY. BUT HE WAS--IT WAS POSSESSION OF
11:03AM 11 PARAPHERNALIA. BUT HE WAS ON VIDEOTAPE.

11:03AM 12 [LAUGHTER]

11:03AM 13 Q. OKAY.

11:03AM 14 A. IT'S KIND OF HARD TO--

11:04AM 15 Q. WHAT TYPE OF DRUG WAS IT?

11:04AM 16 A. METH.

11:04AM 17 Q. METHAMPHETAMINE? IS THERE ANYTHING ABOUT THAT CASE
11:04AM 18 THAT SWAYS YOU ONE WAY OR ANOTHER IN HEARING THIS CASE?

11:04AM 19 A. NO.

11:04AM 20 Q. THANK YOU.

11:04AM 21 NOW, IN THIS CASE, MR. GONZALEZ SPOKE A LITTLE BIT
11:04AM 22 ABOUT COCONSPIRATOR OR ACCOMPLICE TESTIMONY. YOU KNOW, NOT
11:04AM 23 ONLY CAN YOU HAVE ACTUAL COCONSPIRATORS--I MEAN, A
11:04AM 24 COCONSPIRATOR IS SOMEBODY THAT'S ACTUALLY INVOLVED IN THIS CASE
11:04AM 25 IN SOME CAPACITY--BUT THERE ALSO MAY BE INFORMANTS OR SOMEBODY

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11:04AM 1 WHO IS AN UNINDICTED COCONSPIRATOR. NOW, DOES ANYBODY BELIEVE
11:04AM 2 THAT SIMPLY BECAUSE THEY WERE PART OF THE CASE THAT THEY'RE
11:04AM 3 AUTOMATICALLY THE MOST CREDIBLE PERSON THAT YOU ARE GOING TO
11:04AM 4 HEAR IN THIS CASE? NO TAKERS?

11:04AM 5 DOES ANYBODY BELIEVE THAT SIMPLY BECAUSE LAW
11:04AM 6 ENFORCEMENT TESTIFIES IN THIS CASE THAT--I MEAN, THEY'RE COPS.
11:05AM 7 THEY CAN'T LIE. RIGHT? THEY CAN'T EXAGGERATE THE TRUTH.
11:05AM 8 RIGHT? DOES ANYBODY BELIEVE THAT THEY ARE AUTOMATICALLY
11:05AM 9 CREDIBLE IN YOUR EYES?

11:05AM 10 NOW, IN THIS CASE, I LOOK FORWARD TO WORKING WITH
11:05AM 11 THE 14 OF YOU LUCKY SOULS WHO ARE SELECTED TO JOIN US FOR THE
11:05AM 12 NEXT SEVEN OR EIGHT DAYS, BUT I IMPLORE YOU TO JUST--WHEN YOU
11:05AM 13 EVALUATE THIS CASE, KEEP IN MIND THAT THE BURDEN OF PROOF IN
11:05AM 14 THIS CASE LIES WITH THE GOVERNMENT AND IT'S THEIR RESPONSIBILITY
11:05AM 15 TO PROVE EACH AND EVERY ELEMENT BEYOND A REASONABLE DOUBT.

11:05AM 16 THANK YOU VERY MUCH. I LOOK FORWARD TO WORKING WITH
11:05AM 17 YOU.

11:05AM 18 THE COURT: THANK YOU, MR. KEMP.

11:05AM 19 NOW, MR. WHALEN AND MR. PETRAZIO, YOU WILL HAVE
11:05AM 20 QUESTIONS FOR THE JURY.

11:05AM 21 WE'VE BEEN IN HERE FOR TWO HOURS. I DON'T WANT TO
11:05AM 22 STRETCH YOUR CAPACITY TO STAY IN ONE PLACE FOR TOO LONG. SO,
11:06AM 23 LADIES AND GENTLEMEN, LOOK AT WHERE YOU ARE SITTING AND WHO
11:06AM 24 IS SITTING NEXT TO YOU. HANG ON TO YOUR NUMBERS. LET'S TAKE
11:06AM 25 A RECESS FOR ABOUT 15 MINUTES. SO IF YOU NEED TO USE THE

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11:06AM 1 RESTROOM, YOU CAN, OR STAND UP AND STRETCH, YOU CAN. YOU
11:06AM 2 CERTAINLY CAN LEAVE THE COURTROOM. I WOULD ASK YOU TO GO AHEAD
11:06AM 3 AND JUST LEAVE THE COURTROOM, GO DOWN THE HALL. AND THEN WAIT
11:06AM 4 OUTSIDE UNTIL WE BRING YOU ALL BACK IN TOGETHER. SO I'LL SEE
11:06AM 5 YOU IN 15 MINUTES. PLEASE SIT IN THE SAME PLACES.

11:06AM 6 [OPEN COURT, DEFENDANTS PRESENT, VENIRE NOT PRESENT]
11:07AM 7 THE COURT: ALL RIGHT. WE'LL RECESS FOR 15 MINUTES.

11:07AM 8 [RECESS]

11:19AM 9 [OPEN COURT, DEFENDANTS PRESENT, NO VENIRE]
11:19AM 10 THE COURT: MR. PETRAZIO, ARE YOU READY? OKAY.
11:19AM 11 MR. WHALEN, ARE YOU READY?

11:19AM 12 MR. WHALEN: I'M READY, YOUR HONOR.

11:19AM 13 THE COURT: OKAY.

11:19AM 14 MR. HAMMOND, TELL THEM TO COME BACK IN.

11:20AM 15 [OPEN COURT, DEFENDANTS AND VENIRE PRESENT]

11:21AM 16 THE COURT: OKAY. YOU CAN BE SEATED.

11:22AM 17 LADIES AND GENTLEMEN, WE'RE READY TO RESUME
11:22AM 18 QUESTIONING BY THE LAWYERS. MR. WHALEN IS NEXT, ON BEHALF OF
11:22AM 19 TIMOTHY BOWEN. SO IF YOU WILL PLEASE GIVE YOUR ATTENTION TO
11:22AM 20 MR. WHALEN.

11:22AM 21 VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT BOWEN

11:22AM 22 MR. WHALEN: MAY IT PLEASE THE COURT.

11:22AM 23 THE COURT: YES.

11:22AM 24 MR. WHALEN: COUNSEL.

11:22AM 25 GOOD MORNING, EVERYONE. I KNOW YOU ARE THRILLED TO

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT BOWEN

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11:22AM 1 HEAR FROM ANOTHER LAWYER. I'LL TRY TO MAKE IT BRIEF. I HAVE
11:22AM 2 A FEW TOPICS I WANT TO TALK TO YOU ABOUT. BUT I WOULD HOPE--
11:22AM 3 I WOULD ENCOURAGE YOU TO TALK TO US. I MEAN, YOU'VE BEEN
11:22AM 4 SOMEWHAT OF A QUIET GROUP. AND I UNDERSTAND THIS IS SOMEWHAT
11:22AM 5 NEW FOR YOU-ALL AND CAN BE SOMEWHAT INTIMIDATING, BUT THE MORE
11:23AM 6 YOU TALK, THE BETTER WE'RE ABLE TO DO OUR JOB TO SELECT THE
11:23AM 7 BEST JURORS FOR THIS TYPE OF CASE. I CAN TELL YOU HISTORICALLY
11:23AM 8 THE MORE QUIET YOU ARE, THE MORE LIKELY YOU ARE TO GET SELECTED.
11:23AM 9 IT JUST HAPPENS TO WORK OUT THAT WAY.

11:23AM 10 Q. ALSO, SO YOU ARE AWARE, EVERYBODY ON THIS SIDE, YOU MAY
11:23AM 11 BE FEELING A LITTLE BIT BETTER ABOUT YOURSELVES. JUST TO KIND
11:23AM 12 OF GIVE YOU THE NUMBERS, WE HAVE TO PICK 14 JURORS. THE
11:23AM 13 DEFENSE GETS TO STRIKE 10 PEOPLE, THE GOVERNMENT GETS TO STRIKE
11:23AM 14 SIX PEOPLE, SO THAT'S 16 PEOPLE, AND 14 MAKES 30. WHO'S JUROR
11:23AM 15 NUMBER 30? OKAY. SO YOU ARE RIGHT AT THE CUT LINE. OKAY?
11:23AM 16 SO EVERYBODY AFTER 30, YOUR CHANCES ARE DIMINISHED, BUT THERE'S
11:23AM 17 ALWAYS A CHANCE. SO, IF I'M NOT OVER ON THIS SIDE OF THE ROOM
11:23AM 18 TOO MUCH, DON'T GET OFFENDED, BUT I DO WANT YOU TO ANSWER
11:23AM 19 QUESTIONS AND RAISE YOUR HAND IF IT PERTAINS TO YOU, BUT
11:23AM 20 I MAY BE OVER HERE A LITTLE BIT MORE. OKAY?

11:23AM 21 THE FIRST THING I WANT TO TALK ABOUT, TOO, IS,
11:24AM 22 MR. GONZALEZ TALKED ABOUT COCONSPIRATOR TESTIMONY AND, YOU
11:24AM 23 KNOW, HOW PEOPLE WILL COME IN HERE AND OBVIOUSLY THEY'RE
11:24AM 24 ALLEGED COCONSPIRATORS, OR THEY'VE PLED GUILTY AND ADMITTED
11:24AM 25 THEIR GUILT. AND YOU CAN'T CONSIDER THAT PLEA THAT THEY CHOSE

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11:24AM 1 TO DO AS EVIDENCE OF GUILT OF ANY OTHER PERSON. DOES THAT MAKE
11:24AM 2 SENSE TO EVERYBODY? OKAY.

11:24AM 3 BUT, ALSO, HE TOLD YOU THAT, YOU KNOW, THAT CAN BE
11:24AM 4 SUFFICIENT. IF YOU BELIEVE THEM BEYOND A REASONABLE DOUBT,
11:24AM 5 THAT, YOU KNOW, IF YOU BELIEVE IT, IT CAN BE SUFFICIENT TO
11:24AM 6 FIND SOMEBODY GUILTY. BUT THERE'S ALSO A SECOND PART TO THAT
11:24AM 7 POTENTIAL INSTRUCTION I THINK YOU ARE GOING TO GET. I WANT TO
11:24AM 8 JUST SHARE IT WITH YOU. I THINK THE COURT WILL INSTRUCT YOU
11:24AM 9 YOU SHOULD KEEP IN MIND THAT SUCH TESTIMONY IS ALWAYS TO BE
11:24AM 10 RECEIVED WITH CAUTION AND WEIGHED WITH GREAT CARE. YOU SHOULD
11:24AM 11 NEVER CONVICT A DEFENDANT UPON THE UNSUPPORTED TESTIMONY OF AN
11:24AM 12 ALLEGED ACCOMPLICE UNLESS YOU BELIEVE THAT TESTIMONY BEYOND A
11:25AM 13 REASONABLE DOUBT. AND THE FACT THEY'VE ENTERED A PLEA IS NOT
11:25AM 14 EVIDENCE OF GUILT OF ANY OTHER PERSON. SO DOES THAT MAKE SENSE
11:25AM 15 TO EVERYBODY?

11:25AM 16 JUROR NUMBER 3, WHY DO YOU THINK THAT THE COURT MAY
11:25AM 17 INSTRUCT YOU YOU SHOULD WEIGH THAT TESTIMONY WITH GREAT CARE?
11:25AM 18 WHY DO YOU THINK THEY INCLUDE THAT LANGUAGE IN THAT
11:25AM 19 INSTRUCTION?

11:25AM 20 A. COULD YOU REPEAT THAT?

11:25AM 21 Q. SURE. YOU MAY BE INSTRUCTED AS RELATES TO CODEFENDANTS
11:25AM 22 WHO MAY COME IN AND TESTIFY. THEY'VE PLED GUILTY. THEY MAY
11:25AM 23 SAY, "THIS IS WHAT I DID IN THE CASE, AND HERE'S WHAT I KNOW
11:25AM 24 ABOUT OTHERS." YOU MAY BE INSTRUCTED YOU SHOULD ALWAYS WEIGH
11:25AM 25 THEIR TESTIMONY WITH CAUTION AND GREAT CARE AND YOU SHOULD

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11:25AM 1 NEVER CONVICT A DEFENDANT UPON THE UNSUPPORTED TESTIMONY OF
11:25AM 2 ALLEGED ACCOMPLICES UNLESS YOU BELIEVE THEM BEYOND A REASONABLE
11:25AM 3 DOUBT. WHY DO YOU THINK YOU ARE INSTRUCTED AS IT RELATES TO
11:25AM 4 THAT? WHY DO YOU THINK COCONSPIRATOR TESTIMONY SHOULD BE
11:25AM 5 WEIGHED WITH GREAT CARE? DO YOU HAVE ANY THOUGHTS ABOUT THAT?
11:26AM 6 WHAT ARE YOUR THOUGHTS?

11:26AM 7 A. I JUST THINK YOU NEED TO DISCERN WHETHER THEY'RE LYING,
11:26AM 8 WHETHER THERE'S SOMETHING IN IT FOR THEM.

11:26AM 9 Q. LET'S TALK ABOUT THAT. WHEN YOU SAY "THERE'S SOMETHING
11:26AM 10 IN IT FOR THEM," WHAT DO YOU THINK THAT COULD BE?

11:26AM 11 A. I'M NOT SURE. DID THEY PLEAD?

11:26AM 12 Q. MOST OF THE TIME THEY WOULD HAVE PLED GUILTY.

11:26AM 13 A. RIGHT.

11:26AM 14 Q. AND SOMETIMES IN PLEA AGREEMENTS THERE'S AN EXPECTATION
11:26AM 15 THAT THEY MAY GET THEIR SENTENCE REDUCED IN EXCHANGE FOR THAT.
11:26AM 16 DO YOU THINK THAT IS SOMETHING THAT COULD MOTIVATE SOMEBODY TO
11:26AM 17 TESTIFY UNTRUTHFULLY?

11:26AM 18 A. YOU'RE ASKING ME TO DISCERN HIS HEART, HIS HONESTY?

11:26AM 19 Q. WELL, THAT'S PART OF YOUR JOB AS A JUROR, TO JUDGE
11:26AM 20 CREDIBILITY. I MEAN, IS THAT SOMETHING YOU WOULD LOOK AT?

11:26AM 21 A. THERE'S THAT RISK.

11:26AM 22 Q. OKAY.

11:26AM 23 A. THERE'S THAT RISK OR THAT THOUGHT.

11:26AM 24 Q. OKAY.

11:26AM 25 JUROR NUMBER 1, WHAT ARE YOUR THOUGHTS ABOUT THAT?

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11:26AM 1 A. OBVIOUSLY, THERE'S A LEVEL OF INHERENT DOUBT IF THERE'S
11:26AM 2 SOMETHING FOR THAT PERSON TO GAIN. SO THEY WOULD HAVE TO, YOU
11:26AM 3 KNOW, OVERWHELM ME WITH EVIDENCE THAT THAT IS SOMETHING THAT
11:27AM 4 HAPPENED.

11:27AM 5 Q. OKAY.

11:27AM 6 JUROR NUMBER 5, WHAT ARE YOUR THOUGHTS?

11:27AM 7 A. I HAVE THE SAME OPINION, THAT IF THEY'RE TESTIFYING AND
11:27AM 8 THEY TOOK A PLEA, THAT MAYBE THEY MIGHT GET SOMETHING OUT OF IT
11:27AM 9 FOR TESTIFYING TRUTHFULLY OR UNTRUTHFULLY.

11:27AM 10 Q. JUROR NUMBER 13. WHO IS 13? JUROR NUMBER 13, WHAT ARE
11:27AM 11 YOUR THOUGHTS ABOUT THAT?

11:27AM 12 A. I HAVE TO TAKE INTO CONSIDERATION THE EVIDENCE THAT HAS
11:27AM 13 BEEN PRESENTED TO SUPPORT WHAT THE PERSON IS STATING AND ALSO
11:27AM 14 LOOK AT THE PLEA BARGAIN THAT WAS DONE, BUT STILL LOOK AT OTHER
11:27AM 15 EVIDENCE THAT WOULD SUPPORT IT.

11:27AM 16 Q. DOES THAT MAKE SENSE TO YOU, THAT YOU SHOULD WEIGH THAT
11:27AM 17 WITH GREAT CARE? DOES THAT SEEM RIGHT?

11:27AM 18 A. YES.

11:27AM 19 Q. OKAY.

11:27AM 20 DOES ANYBODY HAVE A DIFFERENT OPINION OR WANT TO
11:27AM 21 SHARE A DIFFERENT OPINION AS IT RELATES TO THAT?

11:28AM 22 JUROR NUMBER 16, WHAT ARE YOUR THOUGHTS?

11:28AM 23 A. AS THEY'VE EXPLAINED, THE BURDEN OF PROOF IS WITH THE
11:28AM 24 GOVERNMENT. THEY'RE GONNA BRING WITNESSES AND COCONSPIRATORS
11:28AM 25 WHO MAY OR MAY NOT HAVE SOMETHING TO GAIN FROM IT. BUT THE

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11:28AM 1 TOTAL EVIDENCE IS WHAT YOU MAKE YOUR JUDGMENT ON, NOT JUST THE
11:28AM 2 SOLE PERSON.

11:28AM 3 Q. OKAY. THANK YOU.

11:28AM 4 NOW, THE OTHER ISSUE I WANT TO TALK ABOUT IS THAT IN
11:28AM 5 THESE CASES WHERE THERE'S MULTIPLE DEFENDANTS, OBVIOUSLY, THEY
11:28AM 6 TRY THEM TOGETHER. SO THERE'S THREE PEOPLE THAT HAVE BEEN
11:28AM 7 ACCUSED AND ARE BEING TRIED AT THE SAME TIME. BUT THE LAW IS
11:28AM 8 GOING TO TELL YOU, AND THE JUDGE WILL INSTRUCT YOU, THAT YOU
11:28AM 9 HAVE TO CONSIDER THE EVIDENCE FOR EACH INDIVIDUAL PERSON
11:28AM 10 SEPARATELY. OKAY? YOU ARE GOING TO HEAR A LOT OF STUFF, AND
11:28AM 11 THEN YOU'VE GOT TO HAVE THE ABILITY TO KIND OF SORT THAT OUT
11:28AM 12 AND FIGURE OUT: HOW DOES THAT APPLY TO THIS DEFENDANT? HOW
11:28AM 13 DOES THAT APPLY TO THAT PERSON? HOW DOES IT APPLY TO THIS
11:29AM 14 PERSON? AND SO THE CONCERN IS THAT SOMEHOW IT'S ALL GONNA
11:29AM 15 GETTING JUMBLED TOGETHER AND IT'S KIND OF LIKE, "WELL, IF
11:29AM 16 THEY'RE ALL HERE TOGETHER, THEY ALL MUST HAVE DONE SOMETHING
11:29AM 17 WRONG," AND IT KIND OF BLEEDS OVER. THAT'S KIND OF MY CONCERN
11:29AM 18 WHEN WE TRY THESE TYPES OF CASES, IS THAT WHEN YOU ARE TRIED
11:29AM 19 TOGETHER, IT JUST SEEMS LIKE, "WELL, IF THEY'RE TOGETHER,
11:29AM 20 THE EVIDENCE CAN BE USED COLLECTIVELY AGAINST THEM." SO DOES
11:29AM 21 ANYBODY, AS YOU SIT HERE, FEEL THAT THEY WOULD HAVE DIFFICULTY
11:29AM 22 SEPARATING TESTIMONY AND EVIDENCE OUT AND BEING ABLE TO APPLY
11:29AM 23 IT, YOU KNOW, TO EACH CASE? BECAUSE BASICALLY YOU HAVE THREE
11:29AM 24 DIFFERENT CASES YOU ARE GONNA BE HEARING. DOES ANYBODY THINK
11:29AM 25 CONCEPTUALLY, "I'M GONNA HAVE A HARD TIME DOING THAT; THAT'S

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11:29AM 1 GONNA BE DIFFICULT FOR ME TO DO"? DOES ANYBODY FEEL THAT WAY
11:29AM 2 AS YOU SIT HERE TODAY, KNOWING THAT'S WHAT YOU ARE GOING TO
11:29AM 3 BE REQUIRED TO DO?

11:29AM 4 JUROR NUMBER 10, WHAT ARE YOUR THOUGHTS ON THAT?

11:29AM 5 A. I THINK IT WOULD BE DIFFICULT, BUT, I MEAN, IF YOU
11:30AM 6 LISTEN TO ALL THE EVIDENCE THAT'S GIVEN AND JUST KIND OF THINK
11:30AM 7 ABOUT EACH INDIVIDUAL PERSON, I THINK YOU CAN WORK THROUGH IT.
11:30AM 8 BUT...

11:30AM 9 Q. CONCEPTUALLY, IT'S DIFFICULT?

11:30AM 10 A. WELL, I MEAN, YEAH. I MEAN, THEY'RE ALL SITTING THERE
11:30AM 11 ON TRIAL TOGETHER. YOU LISTEN TO THE DEFENSE ABOUT ALL OF THEM
11:30AM 12 TOGETHER, ALL OF THEM INDIVIDUALLY, I WOULD THINK. I HONESTLY
11:30AM 13 DON'T KNOW. I MEAN, I'VE NEVER DONE THIS, SO, YOU KNOW...

11:30AM 14 Q. WELL, AS YOU START TO THINK ABOUT IT AND YOU ARE
11:30AM 15 SITTING HERE HEARING THESE LEGAL CONCEPTS, DO YOU THINK
11:30AM 16 THAT'S SOMETHING YOU COULD DO AND HAVE THE ABILITY TO DO?

11:30AM 17 A. YEAH, I THINK I COULD. IT SEEMS LIKE IT WOULD BE A
11:30AM 18 LOT, OR IT'S A LOT RIGHT NOW.

11:30AM 19 Q. OKAY.

11:30AM 20 DOES ANYBODY FEEL THE SAME WAY AS JUROR NUMBER 10?
11:30AM 21 WE'RE KIND OF THROWING A LOT AT YOU. OKAY.

11:30AM 22 JUROR NUMBER 7, TELL ME WHAT YOU ARE THINKING RIGHT
11:30AM 23 NOW. WHAT ARE YOU FEELING?

11:30AM 24 A. I'M NUMBER 7. WHAT I BELIEVE, THIS TYPE OF THING IS
11:31AM 25 QUITE NEW. WHAT WILL BE COMING OUT FROM THE DELIVERING OF THE

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT BOWEN

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11:31AM 1 TESTIMONY, I'LL TAKE A LOOK AT THAT. AND TO DISTINGUISH
11:31AM 2 BETWEEN INDIVIDUAL AND INDIVIDUAL IS TOUGH JOB [SIC]. BUT
11:31AM 3 SINCE ONLY ONE TIME AND THERE ARE A LOT OF THINGS WE ARE TO
11:31AM 4 BELIVE, WE HAVE DEALING [SIC]. BUT WE'LL SEE.

11:31AM 5 Q. OKAY. AND YOU SAID IT'S A TOUGH JOB. DO YOU THINK YOU
11:31AM 6 HAVE THE ABILITY TO DO THAT AND BE ABLE TO SEPARATE THAT OUT,
11:31AM 7 OR DO YOU THINK "BECAUSE THEY'RE ALL SITTING TOGETHER, IT'S
11:31AM 8 GOING TO BE DIFFICULT FOR ME TO SEPARATE THEM OUT"?

11:31AM 9 A. IT'S NOT BECAUSE OF THAT. IT'S BECAUSE I'LL BE ABLE TO
11:31AM 10 DO IT. THE CASE IS ONE, ONE CRIME, MULTIPLE PEOPLE INVOLVED.

11:31AM 11 Q. AND YOU WOULD AGREE THAT EVEN THOUGH THEY'VE BEEN
11:31AM 12 CHARGED, THAT DOESN'T MEAN EVERYBODY IS GUILTY? IT DOESN'T
11:31AM 13 MEAN EVERYBODY IS GUILTY JUST BECAUSE THEY'VE BEEN CHARGED?

11:31AM 14 A. I DO, YES.

11:31AM 15 Q. OKAY. ALL RIGHT.

11:31AM 16 DOES ANYBODY ELSE, AS THEY SIT HERE, SAY TO
11:32AM 17 THEMSELVES, "LOOK, IT'S A TOUGH JOB, IT SEEMS OVERWHELMING TO
11:32AM 18 ME, BUT I'M GOING TO HAVE A HARD TIME TO BE ABLE TO SEPARATE
11:32AM 19 AND GIVE EACH AND EVERY PERSON ACCUSED A SEPARATE, FAIR TRIAL
11:32AM 20 AND JUDGE THEIR EVIDENCE AND THE GOVERNMENT'S CASE AGAINST
11:32AM 21 THEM INDIVIDUALLY AND SEPARATELY"? IS ANYBODY GOING TO HAVE
11:32AM 22 DIFFICULTY DOING THAT?

11:32AM 23 I KNOW WE'VE TALKED ABOUT THIS, BUT I DON'T THINK
11:32AM 24 WE'VE REALLY KIND OF DELVED INTO IT TOO MUCH. OBVIOUSLY,
11:32AM 25 PART OF THE PRESUMPTION OF INNOCENCE IS THAT EVERYBODY HAS

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11:32AM 1 AN ABSOLUTE RIGHT TO TESTIFY AT THEIR TRIAL, THEY HAVE AN
11:32AM 2 ABSOLUTE RIGHT NOT TO TESTIFY AT THEIR TRIAL. AND SO YOU KNOW
11:32AM 3 THAT DECISION TO TESTIFY IS THE PERSON WHO IS ACCUSED OF THE
11:32AM 4 CRIME, IT'S SOLELY THEIR DECISION. THEY CAN LOOK TO OTHER
11:32AM 5 PEOPLE FOR ADVICE, THEY CAN LOOK TO ME AS THEIR LAWYER FOR
11:32AM 6 ADVICE, THEY CAN THINK ABOUT IT, PRAY ABOUT IT, TALK TO
11:32AM 7 FRIENDS, "SHOULD I TESTIFY OR NOT TESTIFY?" BUT ULTIMATELY
11:33AM 8 IT'S THEIR DECISION. EVEN IF I SAID TO THEM, "YOU SHOULD NOT
11:33AM 9 TESTIFY, I DON'T THINK IT'S IN YOUR BEST INTEREST, BECAUSE THE
11:33AM 10 GOVERNMENT HASN'T PROVEN THEIR CASE" OR "YOU'RE NOT THE BEST
11:33AM 11 PUBLIC SPEAKER," THEY COULD SAY, "NO, I WANT TO GET UP AND TELL
11:33AM 12 MY SIDE OF IT."

11:33AM 13 NOW, I COULD ALSO SAY, "I THINK YOU SHOULD."

11:33AM 14 AND THEY COULD SAY, "NO, I DON'T FEEL COMFORTABLE
11:33AM 15 DOING IT. I DON'T WANT TO DO IT."

11:33AM 16 OKAY?

11:33AM 17 NOW, OUR NATURAL INCLINATION IN LIFE IS YOU WANT TO
11:33AM 18 HEAR BOTH SIDES OF THE STORY. OKAY? IF ANYBODY HAS MULTIPLE
11:33AM 19 CHILDREN, THE EXAMPLE OF WHEN THE KIDS GET IN TROUBLE, YOU WANT
11:33AM 20 TO HEAR BOTH SIDES OF THE STORY. "YOU TELL ME YOUR SIDE OF
11:33AM 21 THE STORY. I WANT TO HEAR YOUR SIDE OF THE STORY." AND THEN
11:33AM 22 YOU KIND OF SORT IT OUT. OKAY?

11:33AM 23 BUT THAT'S NOT WHAT HAPPENS IN A CRIMINAL CASE,
11:33AM 24 BECAUSE THE BURDEN OF PROOF IS ON THE GOVERNMENT. THEY HAVE TO
11:33AM 25 PROVE IT. SO YOU MAY NOT HEAR THE OTHER PERSON'S STORY. BUT

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11:33AM 1 YOU MAY WANT TO HEAR WHAT THEY HAVE TO SAY. AND THAT'S OKAY.
11:33AM 2 THAT'S NORMAL. THAT'S COMMON SENSE. BUT A PERSON DOES HAVE
11:34AM 3 THE RIGHT NOT TO TESTIFY. AND IF THEY DON'T, THE JUDGE WILL
11:34AM 4 INSTRUCT YOU YOU CAN'T CONSIDER IT FOR ANY REASON WHATSOEVER.
11:34AM 5 OKAY?

11:34AM 6 AS THEY SIT HERE TODAY, THE QUESTION IS: HOW MANY
11:34AM 7 PEOPLE--IT'S JUST A NATURAL INCLINATION, "IF I WAS ACCUSED OF A
11:34AM 8 CRIME, I WOULD WANT TO GET UP AND TELL MY SIDE OF THE STORY"?
11:34AM 9 HOW MANY PEOPLE WOULD FEEL THAT WAY? OKAY.

11:34AM 10 JUROR NUMBER 1. I'M SORRY, I'M GONNA KEEP YOU
11:34AM 11 GETTING UP AND DOWN. YOU FEEL IF IT WAS YOU YOUR NATURAL
11:34AM 12 INCLINATION IS, "I'D WANT TO GET UP AND TELL MY SIDE OF THE
11:34AM 13 STORY"?

11:34AM 14 A. SURE. LIKE YOU SAID, IT'S HUMAN NATURE.

11:34AM 15 Q. BECAUSE YOU FEEL THAT WAY, IF A PERSON DIDN'T GET UP
11:34AM 16 AND TELL THEIR SIDE OF THE STORY, AND YOU WERE INSTRUCTED NOT
11:34AM 17 TO CONSIDER THAT, WOULD YOU BE ABLE TO FOLLOW THAT INSTRUCTION?

11:34AM 18 A. ABSOLUTELY.

11:34AM 19 Q. OKAY.

11:34AM 20 IS THERE ANYBODY HERE THAT SAYS TO THEMSELVES,
11:34AM 21 "LOOK, I COULDN'T FOLLOW THAT INSTRUCTION. I'M GONNA BE BACK
11:34AM 22 IN THE JURY ROOM WONDERING WHAT THEY WOULD HAVE SAID. WHY
11:35AM 23 DIDN'T THEY TESTIFY?" DOES ANYBODY FEEL THAT WAY? JUROR
11:35AM 24 NUMBER 24.

11:35AM 25 A. I THINK, BASED ON THE QUESTIONING, IF IT'S A CONSPIRACY

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11:35AM 1 AND THERE ARE PEOPLE WHO WILL BE TESTIFYING THAT THEY WERE PART
11:35AM 2 OF THAT, BUT THEY'RE NOT ON TRIAL, IF THERE ARE THOSE WHO WOULD
11:35AM 3 TESTIFY AND WON'T, I THINK IT WOULD SHED SOME SORT OF DOUBT
11:35AM 4 IN MY MIND AS TO WHY THEY WOULD NOT. THE MURKINESS OF THE
11:35AM 5 CONSPIRACY AND THE CIRCUMSTANTIAL EVIDENCE AND EVERYTHING
11:35AM 6 ELSE THAT'S BEEN LAID OUT WOULD TEND TO PLAY INTO A BIAS.

11:35AM 7 Q. OKAY. AND SO WHAT YOU ARE SAYING IS, IF YOU WERE
11:35AM 8 SELECTED AS A JUROR, YOU WOULDN'T BE ABLE TO SET THAT ASIDE
11:35AM 9 IF THEY DIDN'T COME UP AND TESTIFY?

11:35AM 10 A. I'M SAYING I THINK I WOULD HAVE A BIAS.

11:35AM 11 Q. OKAY. AND I HATE TO DO THIS TO YOU, BUT WHEN LAWYERS
11:35AM 12 HEAR "I THINK" OR "I MIGHT," IT DRIVES US CRAZY.

11:36AM 13 A. I HAVE A BIAS RIGHT NOW AS YOU ASK ME THE QUESTION.

11:36AM 14 Q. OKAY. THANK YOU.

11:36AM 15 DOES ANYBODY ELSE FEEL THE SAME WAY AS JUROR NUMBER
11:36AM 16 24? JUROR NUMBER 4. TELL ME WHAT YOUR THOUGHTS ARE.

11:36AM 17 A. WELL, I JUST HAVE THE SAME FEELING. IF SOMEBODY
11:36AM 18 DOESN'T WANT TO TESTIFY, THEN THERE'S JUST SOME DOUBT THERE
11:36AM 19 THAT HAS TO BE CAREFULLY CONSIDERED, YOU KNOW, AS TO WHY.
11:36AM 20 YOU KNOW, YOU WANT TO ANSWER THAT QUESTION. IF I WERE ON
11:36AM 21 TRIAL, I WOULD WANT TO TELL MY SIDE OF THE STORY. SO...

11:36AM 22 Q. SO YOU FEEL THE SAME WAY, THAT IF THEY DON'T TESTIFY,
11:36AM 23 IT WOULD BE DIFFICULT FOR YOU TO FOLLOW THE INSTRUCTION NOT TO
11:36AM 24 CONSIDER IT?

11:36AM 25 A. IT WOULD BE HARD TO. YOU'D HAVE TO BE VERY CAREFUL OF

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11:36AM 1 THE CONSIDERATION.

11:36AM 2 Q. DOES ANYBODY ELSE FEEL THE SAME WAY AS JURORS NUMBER 4
11:36AM 3 AND 24 ON THIS SIDE OF THE ROOM?

11:36AM 4 ANYBODY ELSE ON THIS SIDE? OKAY.

11:37AM 5 IS THERE ANYBODY HERE WHO FOR ANY MORAL, RELIGIOUS
11:37AM 6 OR PERSONAL BELIEF CANNOT SIT IN JUDGMENT OF ANOTHER PERSON?

11:37AM 7 "THERE'S JUST NO WAY THAT YOU'RE GONNA ASK ME TO MAKE A
11:37AM 8 DECISION ABOUT SOMEBODY ELSE'S LIFE. I JUST CAN'T DO THAT."

11:37AM 9 ANYBODY FEEL THAT WAY ABOUT IT? ALL RIGHT.

11:37AM 10 I HAVE TWO MORE TOPICS TO GO.

11:37AM 11 36.

11:37AM 12 A. IT DOESN'T SOUND LIKE IT'S THAT KIND OF A CASE, BUT I
11:37AM 13 WOULDN'T APPROVE THE DEATH PENALTY ON ANYBODY.

11:37AM 14 Q. OKAY.

11:37AM 15 A. SO THAT'S THE EXCEPTION.

11:37AM 16 Q. ALL RIGHT. THANK YOU, SIR.

11:37AM 17 I THINK MR. GONZALEZ BROUGHT UP THE FACT THAT
11:37AM 18 SOMETIMES WITNESSES, THEY HAVE PRIOR CONVICTIONS. OKAY?
11:37AM 19 THAT'S AN ISSUE THAT COULD AFFECT YOUR CREDIBILITY. SOMETIMES
11:37AM 20 THEY'RE ADMISSIBLE; SOMETIMES THEY'RE NOT ADMISSIBLE. THAT'S
11:37AM 21 ONE AREA WHERE PRIOR CONVICTIONS CAN BECOME RELEVANT AND BE
11:38AM 22 INTRODUCED INTO EVIDENCE. OKAY?

11:38AM 23 THE SECOND TIME OR WAY THAT PRIOR CONVICTIONS CAN BE
11:38AM 24 INTRODUCED IS SOMETIMES THEY CAN BE INTRODUCED FOR A LIMITED
11:38AM 25 PURPOSE TO BE ABLE TO SHOW THEIR MOTIVE OR INTENT OR PLAN,

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11:38AM 1 SCHEME, DESIGN. OKAY?

11:38AM 2 YOU CAN'T INTRODUCE CONVICTIONS TO PROVE CHARACTER,
11:38AM 3 BECAUSE YOU CAN'T JUST SAY, "BECAUSE THEY DID IT BEFORE, THEY
11:38AM 4 DID IT THIS TIME." DOES THAT MAKE SENSE TO EVERYBODY? OKAY.

11:38AM 5 BUT THEY CAN BE LIMITED--THEY CAN BE INTRODUCED FOR
11:38AM 6 THE LIMITED PURPOSE OF TRYING TO SHOW SOMEBODY'S INTENT, THEIR
11:38AM 7 MOTIVE, THOSE TYPES OF THINGS, OR THEIR CREDIBILITY. OKAY?

11:38AM 8 DOES ANYBODY, AS IT RELATES TO THIS ISSUE, HAVE A
11:38AM 9 PROBLEM WITH PRIOR CONVICTIONS COMING IN AND BEING ABLE TO
11:38AM 10 ONLY USE THEM FOR LIMITED PURPOSES? I KNOW THAT'S KIND OF
11:38AM 11 CONFUSING.

11:38AM 12 JUROR NUMBER 1, LET ME--YOU ARE NUMBER 1, SO,
11:38AM 13 UNFORTUNATELY, YOU ARE ON THE HOT SEAT. SO WE'RE GONNA COME
11:39AM 14 BACK TO YOU. I KNOW THAT'S PROBABLY CLEAR AS MUD. OKAY? BUT
11:39AM 15 YOU CAN SEE PRIOR CONVICTIONS COMING IN IF SOMEONE TESTIFIES,
11:39AM 16 UNDER LIMITED CIRCUMSTANCES, TO HELP YOU JUDGE CREDIBILITY.
11:39AM 17 THE SECOND CAN BE IF THEY'RE USED FOR LIMITED PURPOSES OF THEIR
11:39AM 18 INTENT, AND YOU CAN ONLY USE IT FOR THAT PURPOSE. DO YOU THINK
11:39AM 19 IF YOU WERE INSTRUCTED PROPERLY THAT YOU WOULD BE ABLE TO USE
11:39AM 20 PRIOR CONVICTIONS FOR A LIMITED PURPOSE? OR HOW WOULD YOU
11:39AM 21 EVALUATE IT?

11:39AM 22 A. IT WOULD ONLY AFFECT THE CREDIBILITY OF THE WITNESS,
11:39AM 23 NOT GUILT OR INNOCENCE.

11:39AM 24 Q. OKAY. BUT, THEN, THEY ALSO CAN BE INTRODUCED FOR
11:39AM 25 A LIMITED PURPOSE TO SHOW A PERSON WHO IS ACCUSED OF THEIR

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11:39AM 1 INTENT. OKAY? YOU CAN'T USE IT TO SAY, "IF THEY DID IT LAST
11:39AM 2 TIME, THEY DID IT THIS TIME," BUT YOU CAN SAY, "IF THEY DID IT
11:39AM 3 BEFORE, MAYBE THEY INTENDED TO DO IT AGAIN THIS TIME." HOW DO
11:39AM 4 YOU THINK ABOUT THAT LIMITED USE OF SOMEONE'S PRIOR CONVICTION?
11:39AM 5 WOULD YOU FEEL IF THEY'VE HAD A PRIOR CONVICTION FOR SOMETHING
11:40AM 6 SIMILAR, THAT'S JUST GONNA PUSH YOU OVER THE EDGE AND YOU'RE
11:40AM 7 NOT GONNA BE ABLE TO FOLLOW THAT TYPE OF INSTRUCTION? WHAT
11:40AM 8 ARE YOUR THOUGHTS ABOUT THAT?

11:40AM 9 A. I MEAN, THE CASE STILL NEEDS TO BE PROVEN. THEY WOULD
11:40AM 10 SHOW A PROPENSITY THAT THEY HAD THE CAPABILITY TO DO THAT, BUT
11:40AM 11 IT DOESN'T MEAN THAT THEY NECESSARILY DID IT.

11:40AM 12 Q. OKAY. THAT'S VERY WELL SAID.

11:40AM 13 DOES ANYBODY FEEL DIFFERENTLY THAN JUROR NUMBER 1?
11:40AM 14 "LOOK, IF I HEAR ABOUT ANY PRIOR CONVICTIONS, LIMITING
11:40AM 15 INSTRUCTIONS OR NOT, I'M STILL GONNA THINK IF THEY DID IT IN
11:40AM 16 THE PAST, THEY'LL DO IT AGAIN"? HOW MANY PEOPLE FEEL THAT WAY?

11:40AM 17 JUROR NUMBER 5, TELL ME WHAT YOUR THOUGHTS ARE.

11:40AM 18 A. I DO FEEL THAT IF IT'S BROUGHT UP THAT THEY WERE FOUND
11:40AM 19 GUILTY BEFORE, THAT THAT WOULD SWAY MY VOTE OR SWAY MY DECISION
11:40AM 20 ON WHETHER THEY WERE CAPABLE OF DOING IT AGAIN.

11:40AM 21 Q. OKAY. BUT IF YOU WERE GIVEN AN INSTRUCTION TO JUST
11:40AM 22 LIMIT YOUR USE OF IT TO JUST THEIR INTENT, PLAN, SCHEME OR
11:41AM 23 DESIGN, WOULD YOU BE ABLE TO DO THAT? OR DO YOU THINK IF, SAY,
11:41AM 24 THE GOVERNMENT'S CASE WAS NOT AS STRONG, WOULD YOU DISREGARD
11:41AM 25 THAT INSTRUCTION, THEN, AND SAY, "WELL, IF THEY DID IT BEFORE,

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11:41AM 1 THEY PROBABLY DID IT THIS TIME AND THAT CLEARS UP MY REASONABLE
11:41AM 2 DOUBT"?

11:41AM 3 A. I DON'T THINK I COULD SAY THAT.

11:41AM 4 MR. WHALEN: OKAY.

11:41AM 5 THE COURT: ALL RIGHT. WAIT A MINUTE.

11:41AM 6 JUROR NUMBER 5, YOU CAN CONSIDER PRIOR SIMILAR ACTS
11:41AM 7 SUCH AS PRIOR CONVICTIONS THAT ARE SIMILAR, AS MR. WHALEN SAID,
11:41AM 8 FOR THE PURPOSE OF DETERMINING WHETHER OR NOT--NOT WHETHER OR
11:41AM 9 NOT THE DEFENDANT COMMITTED THE ACT--THE CRIME FOR WHICH HE IS
11:41AM 10 ON TRIAL RIGHT HERE AND NOW, OTHER THAN TO CONSIDER WHETHER OR
11:41AM 11 NOT HE HAD THE MENTAL STATE TO COMMIT THE CRIME FOR WHICH HE
11:41AM 12 IS ON TRIAL NOW, OR WHETHER OR NOT HE COMMITTED THE CRIME FOR
11:41AM 13 WHICH HE IS ON TRIAL NOW BECAUSE OF ACCIDENT OR MISTAKE. SO
11:41AM 14 YOU CAN CONSIDER THE PRIOR SIMILAR ACT TO DETERMINE WHETHER OR
11:41AM 15 NOT YOU THINK IT MAY HAVE BEEN AN ACCIDENT OR A MISTAKE ON THIS
11:42AM 16 OCCASION. ON THE INSTANT OCCASION.

11:42AM 17 VENIREPERSON: YES, I CAN DO THAT.

11:42AM 18 THE COURT: YEAH. BUT YOU CAN'T REASON THAT BECAUSE
11:42AM 19 HE DID SOMETHING SIMILAR BEFORE, HE MUST HAVE DONE THIS NOW,
11:42AM 20 HE'S GUILTY. YOU CAN'T DO THAT. YOU HAVE TO LOOK AT THE FACTS
11:42AM 21 AND THE EVIDENCE THAT IS PRESENTED ON THIS OCCASION IN MAKING
11:42AM 22 THAT DETERMINATION.

11:42AM 23 VENIREPERSON: OKAY.

11:42AM 24 THE COURT: OKAY.

11:42AM 25 MR. WHALEN.

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11:42AM 1 MR. WHALEN:

11:42AM 2 Q. IN HEARING THE EXPLANATION, YOU WOULD BE ABLE TO NOT
11:42AM 3 USE IT TO SAY--USE IT FOR GUILT PURPOSES, THAT HE COMMITTED
11:42AM 4 THIS OFFENSE?

11:42AM 5 A. YES.

11:42AM 6 Q. OKAY. YOU COULD DO THAT?

11:42AM 7 A. I COULD DO THAT.

11:42AM 8 Q. OKAY.

11:42AM 9 DOES ANYBODY FEEL THAT THEY WOULD HAVE TROUBLE DOING
11:42AM 10 THAT? BASED ON WHAT THE JUDGE HAS SAID, THE LIMITED PURPOSE
11:42AM 11 YOU CAN USE IT, DOES ANYBODY THINK THEY WOULD HAVE DIFFICULTY
11:42AM 12 NOT USING IT FOR THE ULTIMATE ISSUE OF GUILTY OR NOT GUILTY?

11:43AM 13 NUMBER 23, TELL ME YOUR THOUGHTS.

11:43AM 14 A. I JUST BELIEVE, CONSIDERING THE FACT THAT IT'S INNOCENT
11:43AM 15 BEFORE, YOU KNOW, GUILTY--I THINK IF SOMETHING SIMILAR ALONG
11:43AM 16 THE SAME LINES AS, YOU KNOW, A PRIOR CONVICTION FOR SOMETHING
11:43AM 17 SIMILAR--I THINK THAT WOULD JUST PERSONALLY, FOR ME, KIND OF
11:43AM 18 TAKE THAT, YOU KNOW, INNOCENCE BEFORE GUILT OUT OF THE EQUATION.

11:43AM 19 Q. OKAY. SO, THEN, IF YOU HEARD THAT TYPE OF EVIDENCE,
11:43AM 20 YOU COULDN'T PRESUME--

11:43AM 21 A. I MEAN, I WOULD DEFINITELY TRY, BUT I JUST THINK IT
11:43AM 22 WOULD BE DIFFICULT.

11:43AM 23 Q. AND WHEN YOU SAY "DEFINITELY TRY," YOU CAN'T GUARANTEE
11:43AM 24 US YOU COULD?

11:43AM 25 A. I CAN'T GUARANTEE YOU.

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11:43AM 1 Q. THAT'S FINE.

11:43AM 2 DOES ANYBODY ELSE FEEL THE SAME WAY AS JUROR NUMBER
11:43AM 3 23?

11:43AM 4 JUROR NUMBER 33, TELL ME WHAT YOUR THOUGHTS ARE.

11:44AM 5 A. JUST PRETTY MUCH WHAT HE SAID. I THINK EVERYBODY'S
11:44AM 6 PRESUMED INNOCENT UNTIL PROVEN GUILTY. I THINK YOU WOULD HAVE
11:44AM 7 TO WEIGH THE EVIDENCE. BUT I THINK THAT THAT TESTIMONY MIGHT
11:44AM 8 BE PART OF MY DECISION ON THE EVIDENCE. COULD BE CONSIDERED
11:44AM 9 PARTIAL--YOU KNOW, PART OF THE EVIDENCE.

11:44AM 10 Q. SO, EVEN IF YOU WERE GIVEN AN INSTRUCTION BY THE COURT
11:44AM 11 THAT YOU COULD ONLY USE IT FOR A LIMITED PURPOSE--

11:44AM 12 A. WELL, LIMITED PURPOSE, YES, I COULD DO IT AS A LIMITED
11:44AM 13 PURPOSE, BUT IT WOULD STILL BE, IN MY MIND, PART OF THE
11:44AM 14 EVIDENCE.

11:44AM 15 Q. OKAY. SO EVEN THOUGH YOU'VE HEARD IT AND YOU WERE
11:44AM 16 INSTRUCTED TO LIMIT IT, IT WOULD POTENTIALLY BLEED OVER?

11:44AM 17 A. YES.

11:44AM 18 THE COURT: WAIT A MINUTE. SHE CAN CONSIDER 404(B)
11:44AM 19 EVIDENCE.

11:44AM 20 VENIREPERSON: RIGHT.

11:44AM 21 THE COURT: I MEAN, THERE WOULDN'T BE ANY OTHER
11:44AM 22 REASON TO ADMIT IT--

11:44AM 23 VENIREPERSON: NO.

11:44AM 24 THE COURT: --OTHER THAN FOR YOU TO CONSIDER IT.

11:44AM 25 VENIREPERSON: IT WOULD JUST BE PART OF CONSIDERING

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11:45AM 1 ALL OF THE OVERALL EVIDENCE.

11:45AM 2 THE COURT: WHAT I WOULD INSTRUCT YOU IS THAT IF YOU
11:45AM 3 FIND FROM THE EVIDENCE PRESENTED IN THIS CASE THAT THE ACCUSED
11:45AM 4 COMMITTED THE ACT FOR WHICH HE IS ON TRIAL, WHICH IS, HE'S
11:45AM 5 ACCUSED OF AGREEING WITH OTHERS TO POSSESS WITH INTENT TO
11:45AM 6 DISTRIBUTE METHAMPHETAMINE, THEN YOU CAN CONSIDER PRIOR SIMILAR
11:45AM 7 CONDUCT TO DETERMINE WHETHER OR NOT HE KNOWINGLY CONSPIRED WITH
11:45AM 8 THE PEOPLE HE'S ACCUSED OF CONSPIRING WITH NOW OR WHETHER IT
11:45AM 9 WAS AN ACCIDENT OR A MISTAKE.

11:45AM 10 VENIREPERSON: THAT WOULD BE THE DETERMINATION IN MY
11:45AM 11 MIND, YES.

11:45AM 12 THE COURT: YES. AND THAT'S PERMISSIBLE.

11:45AM 13 VENIREPERSON: THAT'S WHAT I'M TRYING TO SAY.

11:45AM 14 THE COURT: OKAY.

11:45AM 15 MR. WHALEN: ALL RIGHT.

11:45AM 16 Q. ANYBODY ELSE? ANY OTHER THOUGHTS OR FEELINGS ABOUT
11:45AM 17 PRIOR CONVICTIONS? 22. OKAY.

11:45AM 18 A. I UNDERSTAND THE NOT USING PRIOR EVIDENCE, BUT I'M
11:46AM 19 WONDERING, WHEN YOU SAY IT'S AN ACCIDENT, HOW COULD SOMETHING
11:46AM 20 THAT THEY'RE SHOWING EVIDENCE OF BE AN ACCIDENT? IN A THREE-
11:46AM 21 PARTY--WOULD YOU SAY THAT SOMEBODY JUST DOESN'T--HAD NO IDEA?
11:46AM 22 EVEN ON THE EXAMPLE THEY USED ON THE TABLE HERE THAT ONE PERSON
11:46AM 23 DIDN'T KNOW THAT ANOTHER PERSON KNEW, THAT THE FIRST PERSON
11:46AM 24 KNEW THAT THE SECOND PERSON DIDN'T KNOW.

11:46AM 25 [LAUGHTER]

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11:46AM 1 A. I JUST DON'T UNDERSTAND HOW SOMEBODY WOULDN'T--

11:46AM 2 Q. WELL, HERE'S A POTENTIAL DIFFERENT SCENARIO. MAYBE
11:46AM 3 THIS WILL HELP. SAY MR. GONZALEZ HAS AN AGREEMENT WITH
11:46AM 4 MR. MATA TO SELL COCAINE, AND HE HANDS THE BAG TO MS. BATSON
11:46AM 5 AND SAYS, "HEY, CAN YOU GO TAKE THIS TO MR. MATA?" OKAY?

11:46AM 6 A. ARE YOU SAYING THAT SHE MAYBE DIDN'T KNOW WHAT--OKAY,
11:46AM 7 I UNDERSTAND.

11:46AM 8 Q. AND SO, YOU KNOW, THAT COULD BE NOT HAVING ENOUGH
11:46AM 9 KNOWLEDGE. IT COULD BE "THAT'S NOT WHAT I INTENDED. I
11:46AM 10 INTENDED TO JUST SELL THEM SOMETHING ELSE. I DIDN'T KNOW
11:47AM 11 THEY WERE TALKING ABOUT COCAINE."

11:47AM 12 THEY COULD SAY, "HEY, CAN YOU DELIVER THE GOODS OVER
11:47AM 13 THERE?"

11:47AM 14 "SURE, I'LL DELIVER THE GOODS, THAT'S FINE. I CAN
11:47AM 15 GO DO THAT."

11:47AM 16 THERE'S A LOT OF DIFFERENT SCENARIOS. THE WAY HE
11:47AM 17 SET IT UP, HE DID IT THAT WAY TO HELP ILLUSTRATE HIS POINT, BUT
11:47AM 18 THERE CAN BE SITUATIONS WHERE--

11:47AM 19 THE COURT: OR, MA'AM, THERE COULD BE A SITUATION
11:47AM 20 WHERE YOU ARE SHOWN A PHOTOGRAPH OF SOMETHING USED IN THE DRUG
11:47AM 21 BUSINESS. AND YOU MAY BE ABLE TO CONSIDER THE PRIOR SIMILAR
11:47AM 22 CONDUCT IN ORDER TO DETERMINE WHETHER OR NOT THE DEFENDANT KNEW
11:47AM 23 OR DIDN'T KNOW WHAT THAT'S USED FOR.

11:47AM 24 VENIREPERSON: OKAY.

11:47AM 25 THE COURT: BUT THERE MAY BE EVIDENCE OF THAT IN

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11:47AM 1 THIS CASE. AND SO YOU COULD RELY ON THE PRIOR SIMILAR CONDUCT
11:47AM 2 TO DETERMINE WHETHER OR NOT IT WAS A MISTAKE ON THE DEFENDANT'S
11:47AM 3 PART OR WHETHER, BECAUSE HE WAS CONVICTED PREVIOUSLY OF A
11:47AM 4 SIMILAR ACT, HE KNOWS WHAT THAT'S USED FOR.

11:48AM 5 VENIREPERSON: THANK YOU.

11:48AM 6 MR. WHALEN: ALL RIGHT.

11:48AM 7 Q. THE LAST THING I WANT TO TALK ABOUT--THIS IS ANOTHER
11:48AM 8 LEGAL CONCEPT THAT MAY BE CONVOLUTED, AS ALWAYS--IS, SOMETIMES
11:48AM 9 JUST BECAUSE THE GOVERNMENT HAS PROVEN--NOT PROVEN, HAS ALLEGED
11:48AM 10 SOMETHING--EVEN THOUGH THEY'VE ALLEGED IT, THEY MAY NOT PROVE
11:48AM 11 WHAT THEY'VE ALLEGED, BUT THEY MAY PROVE--SOMETIMES IT HAPPENS
11:48AM 12 THAT THEY PROVE THAT A PERSON WAS PART OF A DIFFERENT CONSPIRACY.
11:48AM 13 OKAY? BECAUSE YOU CAN HAVE A SITUATION--YOU MAY GET AN
11:48AM 14 INSTRUCTION AS IT RELATES TO MULTIPLE CONSPIRACIES. OKAY?
11:48AM 15 WHERE THE GOVERNMENT HAS TO PROVE THE PERSON ENTERED INTO A
11:48AM 16 CONSPIRACY WITH THE INTENT TO--THERE WAS AN AGREEMENT, THEY
11:48AM 17 ENTERED INTO IT AND THEY DID IT WITH THE INTENT TO FURTHER
11:48AM 18 IT. OKAY? NOW, IF THEY DON'T PROVE THAT, OBVIOUSLY, YOU
11:48AM 19 FIND SOMEBODY NOT GUILTY. OKAY?

11:48AM 20 BUT THERE CAN BE SITUATIONS WHERE THEY PROVE THAT
11:48AM 21 "HEY, THAT PERSON ENTERED INTO A CONSPIRACY, BUT IT JUST WASN'T
11:49AM 22 THIS ONE THAT THEY'VE CHARGED HIM WITH." OKAY? AND THE LAW
11:49AM 23 MAY SAY, IF YOU GET THAT INSTRUCTION, THAT YOU CAN'T FIND THEM
11:49AM 24 GUILTY OF THIS CONSPIRACY EVEN IF YOU FIND THEY WERE INVOLVED
11:49AM 25 IN ANOTHER CONSPIRACY. OKAY? BECAUSE THERE'S A LOT OF

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11:49AM 1 DIFFERENT SCENARIOS, POTENTIALLY, OF, YOU KNOW, MULTIPLE
11:49AM 2 CONSPIRACIES GOING ON, DIFFERENT GROUPS OF PEOPLE ACTING IN
11:49AM 3 DIFFERENT WAYS WITH DIFFERENT MOTIVES AND DIFFERENT INTENT.
11:49AM 4 BUT IF THE GOVERNMENT CHARGES IT ONE WAY, THEY HAVE TO PROVE
11:49AM 5 IT THAT WAY. OKAY? BUT IF THE EVIDENCE ESTABLISHES A SEPARATE
11:49AM 6 CONSPIRACY OR A DIFFERENT CONSPIRACY THAN THE ONE CHARGED, YOU
11:49AM 7 HAVE TO FIND THEM NOT GUILTY BECAUSE THAT'S WHAT THE LAW SAYS.
11:49AM 8 EVEN THOUGH YOU FIND, "HEY, THEY MAY BE GUILTY OF SOMETHING
11:49AM 9 ELSE, BUT IT'S NOT WHAT YOU'VE PROVEN HERE." OKAY? YOU MAY
11:49AM 10 GET THAT INSTRUCTION AS IT RELATES TO MULTIPLE CONSPIRACIES.

11:49AM 11 SO DOES ANYBODY CONCEPTUALLY, AS THEY SIT HERE AND
11:49AM 12 HEAR THAT, SAY, "WELL, HOW DO I FIND SOMEBODY NOT GUILTY IF
11:50AM 13 THEY'VE PROVEN THEY'RE GUILTY OF SOMETHING ELSE?"

11:50AM 14 JUROR 16, WHAT ARE YOUR THOUGHTS?

11:50AM 15 A. WEIGHING ALL THE EVIDENCE, IT WOULD NOT NECESSARILY BE
11:50AM 16 RIGHT, BUT IT WOULDN'T BE OUR JOB TO MAKE SURE THAT THAT OTHER
11:50AM 17 CONSPIRACY WAS PROSECUTED. THAT WASN'T OUR JOB. OUR JOB IS TO
11:50AM 18 PROSECUTE THIS CASE.

11:50AM 19 Q. ALL RIGHT.

11:50AM 20 DOES ANYBODY DISAGREE WITH WHAT JUROR 16 HAD TO SAY?
11:50AM 21 I MEAN, CONCEPTUALLY, IT COULD BE A HARD THING TO DO. YOU
11:50AM 22 KNOW, YOU ARE ASKING THEM TO FIND SOMEBODY NOT GUILTY EVEN
11:50AM 23 THOUGH THEY'VE PROVEN THEY MAY BE GUILTY OF SOMETHING, BUT THEY
11:50AM 24 JUST DIDN'T PROVE THIS. OKAY? DOES ANYBODY, WHEN YOU HEAR
11:50AM 25 THAT CONCEPT, SAY, "I'M GONNA HAVE A HARD TIME DOING IT, I

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11:50AM 1 COULDN'T DO IT, THERE'S NO WAY IMAGINABLE I COULD DO THAT"?

11:50AM 2 ANYBODY FEEL THAT WAY ON THIS SIDE OF THE ROOM?

11:50AM 3 ANYBODY OVER HERE? ALL RIGHT.

11:50AM 4 I'M GONNA MAKE Y'ALL HAPPY. I'M GONNA SIT DOWN.

11:51AM 5 YOU'VE GOT ONE MORE LAWYER TO GO.

11:51AM 6 BUT BEFORE MR. PETRAZIO FINISHES, IF THERE'S

11:51AM 7 ANYTHING--YOU'VE HEARD A LOT OF DIFFERENT THINGS, I KNOW, AND

11:51AM 8 IT'S ALL COMING AT YOU QUICK IN A SHORT PERIOD OF TIME. IF

11:51AM 9 YOU HEAR ANYTHING OR IF YOU THINK OF ANYTHING THAT YOU THINK

11:51AM 10 WE NEED TO KNOW--BECAUSE, AS MR. GONZALEZ SAYS, WE COME INTO

11:51AM 11 THIS ROOM WITH ALL DIFFERENT LIFE EXPERIENCES, AND YOU MAY NOT

11:51AM 12 BE THE BEST JUROR IN CERTAIN TYPES OF CASES. IF YOU'RE SITTING

11:51AM 13 HERE WITH SOMETHING THAT'S GNAWING AT YOU, THINKING, "I REALLY

11:51AM 14 THINK THEY SHOULD KNOW THIS, BECAUSE IF IT WAS ME, I WOULD WANT

11:51AM 15 THEM TO KNOW IN ORDER TO MAKE AN INFORMED DECISION," FEEL FREE

11:51AM 16 TO VOLUNTEER AND RAISE YOUR HAND. WE NEED TO KNOW THAT, BOTH

11:51AM 17 OF US, SO WE CAN GET THE BEST JURORS FOR THIS CASE. OKAY?

11:51AM 18 THANK YOU VERY MUCH.

11:51AM 19 THE COURT: OKAY. THANK YOU, MR. WHALEN.

11:51AM 20 MR. PETRAZIO.

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11:51AM 22 MR. PETRAZIO: THANK YOU, YOUR HONOR.

11:51AM 23 Q. LAST NIGHT AT ABOUT 8:00, MY PHONE RANG, AND I ANSWERED

11:51AM 24 MY PHONE. I GIVE CLIENTS MY CELL PHONE NUMBER. I ANSWERED

11:52AM 25 THE PHONE, AND IT WAS THE MOM OF A TEENAGE CLIENT OF MINE,

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11:52AM 1 AND SHE SAID, "I NEED TO TALK TO YOU ABOUT ANOTHER CASE."

11:52AM 2 I'M THINKING, "WELL, DID YOUR SON DO SOMETHING
11:52AM 3 ELSE?"

11:52AM 4 "NO, NO, THIS DOESN'T HAVE ANYTHING TO DO WITH HIM.
11:52AM 5 I FOUND OUT THIS MORNING THAT MY HUSBAND IS HAVING AN AFFAIR.
11:52AM 6 HE'S GOT A GIRLFRIEND AND HE'S SPENDING LOTS OF MONEY AND HE
11:52AM 7 JUST LEFT THIS MORNING FOR HAWAII FOR A WEEK."

11:52AM 8 NOW, WHY DO I BRING THAT UP? WHILE I WAS TALKING
11:52AM 9 ON THE PHONE, EVEN THOUGH I COULDN'T SEE HER, SHE CRIED AND
11:52AM 10 SHE GOT MAD AND THEN SHE WAS SCARED. SHE HAD A WHOLE RANGE OF
11:52AM 11 EMOTIONS. NOW, YOU SEE HOW SOMEONE IN THAT POSITION PROBABLY
11:52AM 12 WOULDN'T BE A GOOD JUROR ON A DIVORCE CASE. RIGHT?

11:53AM 13 NUMBER 11, CAN YOU UNDERSTAND HOW A PERSON IN THAT
11:53AM 14 POSITION PROBABLY WOULDN'T BE IN A GOOD POSITION TO SIT ON A
11:53AM 15 JURY IN A CIVIL DIVORCE CASE?

11:53AM 16 A. I COULD SEE IT, BUT I COULD ALSO UNDERSTAND IF THAT
11:53AM 17 PERSON HAS GOOD CHARACTER THEY CAN STILL DO IT. I MEAN, THAT'S
11:53AM 18 WHAT YOU ARE LOOKING FOR IN A JURY, IS SOMEBODY TO COME SIT IN
11:53AM 19 A CHAIR AND BE ABLE TO BE IMPARTIAL AND SEE THE EVIDENCE. SO
11:53AM 20 IN A WAY, YOU ARE ALREADY SAYING THAT PERSON IS NOT--YOU ARE
11:53AM 21 MAKING A JUDGMENT ON THAT PERSON WITHOUT THEM HAVING BEEN
11:53AM 22 PRESUMED INNOCENT.

11:53AM 23 Q. RIGHT. WOULD YOU UNDERSTAND HOW, IF EVIDENCE CAME IN
11:53AM 24 IN A DIVORCE TRIAL IN THAT CASE THAT INVOLVED AN AFFAIR, THAT
11:53AM 25 MIGHT BRING UP SOME FEELINGS THAT THAT PERSON HAD PERSONALLY

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11:53AM 1 EXPERIENCED?

11:53AM 2 A. ANYTHING IS GOING TO BRING UP FEELINGS FOR PEOPLE.

11:53AM 3 Q. RIGHT.

11:53AM 4 A. WE'RE HUMAN.

11:54AM 5 Q. RIGHT. AND DO YOU UNDERSTAND HOW SOME FEELINGS MAY
11:54AM 6 BE STRONGER FOR SOME PEOPLE AS OPPOSED TO, SAY, SOMEONE THAT'S
11:54AM 7 NEVER BEEN MARRIED, NEVER BEEN PUT IN THAT POSITION?

11:54AM 8 A. YES.

11:54AM 9 Q. NUMBER 12, WHAT DO YOU THINK ABOUT THAT?

11:54AM 10 A. I THINK PEOPLE'S STATE OF MIND IS VERY IMPORTANT WHEN
11:54AM 11 YOU'RE IN A TRIAL, BECAUSE YOU DON'T WANT TO TAKE IT OUT ON
11:54AM 12 THEM ON WHAT SOMEBODY DONE TO YOU. SO IT IS IMPORTANT TO
11:54AM 13 HAVE A GOOD MIND WHEN YOU GO INTO SOMETHING LIKE THIS.

11:54AM 14 Q. OKAY. AND YOU UNDERSTAND YOU ARE GONNA HEAR WORDS LIKE
11:54AM 15 "BIAS" OR "PREJUDICE." LOOK, THE REALITY IS I KNOW AND THE
11:54AM 16 JUDGE KNOWS AND THE ATTORNEYS KNOW THAT WE'RE NOT GONNA GET
11:54AM 17 Y'ALL TO STAND UP AND ADMIT, "HEY, I'VE GOT A BIAS. I DON'T
11:54AM 18 THINK I CAN BE FAIR AND IMPARTIAL." BUT WHAT PEOPLE ARE
11:54AM 19 WILLING TO ACKNOWLEDGE IS THAT YOU MAY HAVE STRONG FEELINGS
11:54AM 20 ABOUT SOMETHING. AND THERE'S ABSOLUTELY NOTHING WRONG WITH
11:54AM 21 THAT. WE ALL HAVE WHAT MAY BE REFERRED TO AS BAGGAGE IN
11:55AM 22 CERTAIN AREAS OF OUR LIVES.

11:55AM 23 LET ME GIVE YOU ANOTHER EXAMPLE. ABOUT 10 YEARS
11:55AM 24 AGO, I HAD A JURY TRIAL IN A DWI CASE, A CRIMINAL CASE. SAME
11:55AM 25 BURDEN OF PROOF, BEYOND A REASONABLE DOUBT. AT THE CONCLUSION

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11:55AM 1 OF THE TRIAL, THIS PARTICULAR ONE RESULTED IN A VERDICT OF "NOT
11:55AM 2 GUILTY." AND SOMETIMES IN STATE COURT THE JUDGE WILL TELL THE
11:55AM 3 JURY AFTERWARDS, "IF YOU WANT TO TALK TO THE LAWYERS, YOU ARE
11:55AM 4 WELCOME TO STAY BEHIND AND ASK QUESTIONS."

11:55AM 5 WELL, I VISITED WITH MY CLIENT FOR ABOUT FIVE
11:55AM 6 MINUTES, AND THEN I STEPPED OUT IN THE HALL TO SEE IF THERE
11:55AM 7 WAS ANYONE WAITING. EVERYONE HAD LEFT WITH THE EXCEPTION OF
11:55AM 8 THE FOREMAN OF THE JURY. THE FOREMAN OF THE JURY WALKED UP
11:55AM 9 TO ME AND HE SAID, "MR. PETRAZIO, I JUST WANTED TO TELL YOU
11:55AM 10 SOMETHING."

11:55AM 11 I SAID, "WELL, WHAT IS IT?"

11:55AM 12 AND HE LIFTED THE SLEEVES ON HIS JACKET AND HE
11:55AM 13 PULLED BACK HIS SHIRT ON BOTH ARMS AND THEY WERE BURNT.
11:56AM 14 OBVIOUSLY, HE HAD BEEN IN A FIRE. AND HE SAID, "ABOUT 15 YEARS
11:56AM 15 AGO, I WAS IN AN AUTOMOBILE ACCIDENT AND I WAS HIT BY A DRUNK
11:56AM 16 DRIVER AND I WAS LEFT IN THAT CAR. AND IF IT HADN'T BEEN FOR
11:56AM 17 SOMEONE ELSE THAT STOPPED AND GOT ME OUT OF THAT CAR, I WOULD
11:56AM 18 HAVE DIED."

11:56AM 19 NOW I ASK QUESTIONS ABOUT DWI AND I ASK QUESTIONS
11:56AM 20 ABOUT IF ANYBODY HAD A PERSONAL EXPERIENCE IN A SITUATION
11:56AM 21 LIKE THAT. THAT JUROR DIDN'T RAISE THEIR HAND.

11:56AM 22 AND I KIND OF LOOKED AT HIM AND I WAS, LIKE, "CAN I
11:56AM 23 ASK YOU A QUESTION? WHY DIDN'T YOU ANSWER THAT QUESTION WHEN
11:56AM 24 I ASKED IT IN VOIR DIRE?"

11:56AM 25 AND HIS RESPONSE TO ME WAS, "I WANTED TO SEE IF I

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11:56AM 1 COULD BE FAIR TO YOUR CLIENT."

11:56AM 2 FOLKS, THIS ISN'T THE TIME FOR YOU TO TEST YOUR
11:56AM 3 FORTITUDE. THIS IS THE TIME FOR YOU TO BE HONEST WITH YOURSELF
11:57AM 4 AND WITH US. BECAUSE IF THAT VERDICT HAD GONE THE OTHER WAY
11:57AM 5 IN MY CASE, IT PROBABLY WOULD HAVE BEEN GROUNDS FOR A MISTRIAL.
11:57AM 6 AND IF THAT HAPPENED, THEN THAT JUROR WOULD HAVE WASTED
11:57AM 7 EVERYBODY'S TIME FOR THREE DAYS. DOES EVERYBODY UNDERSTAND...

11:57AM 8 NUMBER 16, CAN YOU UNDERSTAND HOW STRONG FEELINGS
11:57AM 9 MIGHT MAKE SOMEONE THAT'S EXPERIENCED SOMETHING--LET'S SAY IN
11:57AM 10 THIS CASE WE'RE DEALING WITH DRUGS. CAN YOU UNDERSTAND HOW
11:57AM 11 SOMEONE WHO HAS HAD AN EXPERIENCE AND HAS STRONG FEELINGS
11:57AM 12 ABOUT DRUGS OR DRUG USE MIGHT NOT BE A GOOD JUROR IN THIS CASE?

11:57AM 13 A. I UNDERSTAND COMPLETELY.

11:57AM 14 Q. OKAY. CAN YOU GIVE ME AN EXAMPLE OF AN INSTANCE WHERE
11:57AM 15 YOU THINK PROBABLY A PERSON SHOULD SPEAK UP AND SAY, "HEY, I
11:57AM 16 MIGHT WANT TO PASS ON THIS CASE. NOT THE BEST CASE FOR ME.
11:58AM 17 IF IT WAS ANOTHER CASE, MAYBE, BUT THIS IS JUST TOO CLOSE TO
11:58AM 18 HOME"?

11:58AM 19 A. I DON'T HAVE ANY EXPERIENCE WITH SOMETHING LIKE THAT.
11:58AM 20 I COULDN'T SAY. I DON'T KNOW.

11:58AM 21 Q. OKAY. THANK YOU.

11:58AM 22 RAISE YOUR HAND OR SHOW YOUR NUMBER IF YOU
11:58AM 23 PERSONALLY--AND I KNOW THE JUDGE KIND OF COVERED THIS, BUT I
11:58AM 24 WANT TO ASK THE QUESTION A DIFFERENT WAY. WE ALL HAVE HAD
11:58AM 25 EXPERIENCE WITH SOMEONE OR--MAYBE IN YOUR OWN FAMILY, MAYBE A

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11:58AM 1 CLOSE RELATIVE, IT MAY BE A CLOSE FRIEND WHO HAS EXPERIENCED
11:58AM 2 DRUG PROBLEMS. RAISE YOUR HAND IF YOU KNOW SOMEBODY THAT HAS
11:58AM 3 EXPERIENCED--A FRIEND OR FAMILY MEMBER WITH AN ADDICTION OR
11:58AM 4 THAT'S OVERDOSED OR SOMETHING. SO A LOT OF YOU. RIGHT? AND
11:58AM 5 WHAT YOU HAVE TO ASK YOURSELF AND BE HONEST WITH YOURSELF IS,
11:58AM 6 "THERE'S SOMETHING ABOUT THAT THAT MAY CAUSE ME NOT TO BE
11:59AM 7 BIASED OR PREJUDICED AGAINST THESE THREE MEN," BUT THOSE STRONG
11:59AM 8 FEELINGS MIGHT CAUSE YOU TO VIEW THE EVIDENCE A CERTAIN WAY.

11:59AM 9 WHEN MR. WHALEN TALKED ABOUT PRIOR CONVICTIONS AND
11:59AM 10 STUFF COMING IN, LOOK, FOLKS, THERE'S A TENDENCY--IN A DWI
11:59AM 11 CASE, THE NUMBER 1 QUESTION I GET FROM JURORS IS, "YOU KNOW, WE
11:59AM 12 STRUGGLED WITH THIS DECISION. THE ONE QUESTION WE HAD IN THE
11:59AM 13 BACKS OF OUR MINDS: WAS THIS THE FIRST TIME FOR THIS GUY? WAS
11:59AM 14 THIS THE FIRST TIME FOR HER? BECAUSE, MAN, IT JUST SEEMED LIKE
11:59AM 15 THEY KNEW TOO MUCH ABOUT THE LAW." BECAUSE THAT AFFECTS THE
11:59AM 16 WAY THEY VIEW GUILT OR INNOCENCE OR GUILT AND INNOCENCE IN THE
11:59AM 17 CASE. YEAH, THAT MAKES SENSE. THAT'S FAIR. THAT'S COMMON
11:59AM 18 SENSE. RIGHT?

11:59AM 19 I WANT TO TALK A LITTLE BIT ABOUT REASONABLE DOUBT.
11:59AM 20 NUMBER 22, YOU MENTIONED YOU HAD A QUESTION ABOUT ACCIDENT.
12:00PM 21 RIGHT? YOU ARE A PILOT. RIGHT?

12:00PM 22 A. YES.

12:00PM 23 Q. TELL ME WHAT A PILOT DOES BEFORE THEY CAN START THE
12:00PM 24 ENGINES AND TAXI TO TAKEOFF.

12:00PM 25 A. EVERYTHING THAT'S INVOLVED.

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12:00PM 1 Q. TELL US ABOUT YOUR CHECK--YOUR PREFLIGHT CHECKLIST.

12:00PM 2 A. WHEN WE GET THERE, WE'VE GOT TO CHECK THE AIRPLANE ON
12:00PM 3 THE OUTSIDE, CHECK ALL THE SYSTEMS ON THE INSIDE, KNOW WHAT
12:00PM 4 THE WEATHER IS BOTH PLACES, THE AIRPORTS BOTH PLACES, ANYTHING
12:00PM 5 THAT'S WRONG WITH THE RUNWAY, ANY WEATHER EN ROUTE TO THE
12:00PM 6 DESTINATION.

12:00PM 7 Q. WHY IS THAT IMPORTANT TO YOU AS A PILOT?

12:00PM 8 A. SO I'M NOT ON THE FRONT PAGE.

12:00PM 9 Q. RIGHT. BECAUSE IF SOMETHING HAPPENS, THAT'S YOUR
12:00PM 10 FAULT. CORRECT? IF YOU OVERLOOK OR--YOU KNOW, BELIEVE IT
12:00PM 11 OR NOT, SOME PILOTS STILL WILL DO A PREFLIGHT CHECK WITHOUT
12:00PM 12 A CHECKLIST, AND THEY MISS THINGS. BECAUSE AS HUMANS WE
12:00PM 13 MAKE MISTAKES AND MISS THINGS. YOU'VE SEEN THAT HAPPEN?

12:01PM 14 A. OH, YEAH.

12:01PM 15 Q. BUT THE REASON THAT YOU HAVE A CHECKLIST IS SO YOU
12:01PM 16 DON'T MISS THINGS. CORRECT?

12:01PM 17 A. CORRECT.

12:01PM 18 Q. JUST LIKE THE ELEMENTS OF THE CASE, THEY'VE GOT
12:01PM 19 TO CHECK OFF THE ELEMENTS AND PROVE THOSE TO YOU BEYOND A
12:01PM 20 REASONABLE DOUBT, EACH ONE OF THEM.

12:01PM 21 LET ME ASK YOU A QUESTION. GIVE US AN EXAMPLE OF
12:01PM 22 SOMETHING THAT YOU MIGHT ENCOUNTER IN YOUR PREFLIGHT CHECKLIST
12:01PM 23 THAT WOULD GIVE YOU PAUSE AS TO WHETHER OR NOT THAT AIRCRAFT
12:01PM 24 AT THAT TIME IS AIRWORTHY.

12:01PM 25 A. PROBABLY THE EASIEST THING WOULD BE A LEAK, ANY KIND OF

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12:01PM 1 A LEAK.

12:01PM 2 Q. OKAY.

12:01PM 3 A. CAN'T DETERMINE WHERE IT'S COMING FROM.

12:01PM 4 Q. OKAY. WHAT IS A REASONABLE DOUBT TO YOU AS A PILOT?

12:01PM 5 A. EXACTLY THAT, NOT BEING ABLE TO DETERMINE WHAT THE
12:01PM 6 CAUSE IS.

12:01PM 7 Q. OKAY. AND HOW WOULD THAT REASONABLE DOUBT AFFECT YOUR
12:01PM 8 DECISION ON A GO/NO-GO ON TAKING OFF?

12:01PM 9 A. IF I HAVE ANY DOUBT, WE'RE NOT GOING.

12:02PM 10 Q. OKAY. THAT, TO YOU, WOULD BE A REASONABLE DOUBT.
12:02PM 11 CORRECT?

12:02PM 12 A. YES.

12:02PM 13 Q. WHAT ABOUT IF YOUR COMMS ARE OUT, YOUR RADIOS? THERE'S
12:02PM 14 JUST SOMETHING ABOUT IT. IT'S CRACKLING A LITTLE BIT. WOULD
12:02PM 15 THAT BE CAUTION FOR YOU [SIC]?

12:02PM 16 A. IT WOULD PROBABLY DEPEND EXACTLY WHAT IT WAS, BUT WE
12:02PM 17 DO HAVE A WHOLE LIST OF THINGS THAT ARE OKAY TO GO WITHOUT.

12:02PM 18 Q. OKAY.

12:02PM 19 A. AND THAT WOULD BE ONE OF THEM.

12:02PM 20 Q. WITHOUT RADIOS?

12:02PM 21 A. WITHOUT--BECAUSE WE HAVE TWO. IF THERE WAS ONE RADIO,
12:02PM 22 THEN WE COULD GO WITH THE OTHER.

12:02PM 23 Q. BUT YOU WOULDN'T GO WITHOUT BOTH. CORRECT?

12:02PM 24 A. CORRECT.

12:02PM 25 Q. YOU FLY INSTRUMENTS. CORRECT?

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12:02PM 1 A. YEAH.

12:02PM 2 Q. OKAY. THANK YOU.

12:02PM 3 NUMBER 10--NUMBER 22, MEET YOUR FRIEND NUMBER 10.

12:02PM 4 YOU ARE AN AIR-TRAFFIC CONTROLLER. CORRECT? IS THERE SOMETHING
12:02PM 5 ABOUT YOUR JOB THAT WOULD CAUSE YOU TO HAVE A REASONABLE DOUBT
12:02PM 6 WITH RESPECT TO SOMETHING YOU MAY BE SEEING? DO YOU ACTUALLY
12:02PM 7 WATCH A SCREEN?

12:02PM 8 A. YES, SIR.

12:02PM 9 Q. AND YOU ARE RESPONSIBLE FOR MAINTAINING COMMUNICATIONS
12:02PM 10 BETWEEN THE AIRCRAFT AND GROUND. CORRECT?

12:03PM 11 A. YES.

12:03PM 12 Q. OKAY. CAN YOU GIVE US AN EXAMPLE OF SOMETHING THAT
12:03PM 13 MIGHT BE REASONABLE DOUBT IN YOUR MIND AS TO WHETHER OR NOT
12:03PM 14 YOU SHOULD TAKE THAT CHAIR AND PERFORM YOUR JOB THAT DAY?

12:03PM 15 A. YOU MEAN REASONABLE IN PHYSICALLY HOW I AM, OR JUST
12:03PM 16 REASONABLE ON THE JOB LOOKING AT WHETHER SOMETHING IS WORKING
12:03PM 17 OR NOT?

12:03PM 18 Q. I MEAN, EVERY DAY YOU HAVE TO MAKE A DECISION ON
12:03PM 19 WHETHER YOU SHOULD TAKE--SIT IN THAT CHAIR. CORRECT?

12:03PM 20 A. YES.

12:03PM 21 Q. CAN YOU GIVE ME AN EXAMPLE OF SOMETHING THAT WOULD
12:03PM 22 CAUSE YOU REASONABLE DOUBT AS TO WHETHER OR NOT YOU SHOULD
12:03PM 23 WORK THAT DAY?

12:03PM 24 A. I MEAN, IF I'M NOT PHYSICALLY ABLE TO DO IT, YOU KNOW,
12:03PM 25 IF I'M SICK, IF I KNOW THAT I CAN'T--IF I CAN'T TALK AND I

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12:03PM 1 CAN'T COMMUNICATE. SO RIGHT THERE WOULD BE A REASON.

12:03PM 2 Q. OKAY. THANK YOU.

12:03PM 3 DOES ANYBODY ELSE--CAN YOU GIVE ME AN EXAMPLE OF
12:03PM 4 SOMETHING THAT WOULD GIVE YOU A REASONABLE DOUBT IN MAKING
12:03PM 5 A DECISION IN YOUR EVERYDAY LIFE? YOU KNOW, THE JUDGE AND THE
12:03PM 6 ATTORNEYS, WE WANT YOU TO USE YOUR REASON, YOUR COMMON SENSE.

12:04PM 7 YOU ARE ACTUALLY GIVEN A DEFINITION IN FEDERAL COURT ABOUT
12:04PM 8 WHAT REASONABLE DOUBT IS. DOES ANYBODY ELSE HAVE AN EXAMPLE?

12:04PM 9 NOW, OBVIOUSLY, THE STANDARD IN A CRIMINAL CASE IS
12:04PM 10 THE HIGHEST STANDARD WE HAVE IN THE LAW. OKAY? AND WHAT DOES
12:04PM 11 IT TAKE FOR SOMEBODY TO BE HERE, TO BE CHARGED WITH A CRIME?
12:04PM 12 WHAT DOES THAT TAKE? DOES THE OFFICER OR THE AGENT THAT ARRESTS
12:04PM 13 HIM HAVE TO BE A HUNDRED PERCENT CERTAIN THAT THEY'VE COMMITTED
12:04PM 14 A CRIME? NO. THEY HAVE TO HAVE PROBABLE CAUSE TO MAKE AN
12:04PM 15 ARREST. THAT'S THE SAME BURDEN THAT A POLICE OFFICER NEEDS
12:04PM 16 TO WRITE YOU A SPEEDING TICKET. PROBABLE CAUSE. PROBABLY.
12:04PM 17 RIGHT?

12:04PM 18 DOES ANYBODY UNDERSTAND HOW YOU COULD BE HERE AND
12:04PM 19 CHARGED WITH A CRIME BUT THE EVIDENCE MIGHT NOT BE ENOUGH TO
12:04PM 20 GET TO WHERE YOU COULD CONVICT SOMEONE BECAUSE THE BURDEN IS
12:04PM 21 SO MUCH HIGHER? DOES EVERYBODY UNDERSTAND THAT? AND THAT
12:05PM 22 IT'S OKAY--AND WE'RE NOT CALLING AGENTS OR POLICE OFFICERS
12:05PM 23 OR THE GOVERNMENT--WE'RE NOT CALLING THEM LIARS. THEY MADE A
12:05PM 24 DECISION BASED ON THE BEST INFORMATION THEY HAD AT THE TIME.
12:05PM 25 BUT UNDERSTAND IT DOESN'T TAKE A WHOLE LOT TO BE SITTING AT

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12:05PM 1 THIS TABLE. IT DOES REQUIRE A WHOLE LOT TO CONVICT SOMEONE
12:05PM 2 FOR THE CRIME THEY'RE CHARGED WITH. DOES EVERYBODY AGREE WITH
12:05PM 3 THAT? RAISE YOUR HAND IF YOU'VE GOT A PROBLEM WITH THAT.
12:05PM 4 ANYONE?

12:05PM 5 HOW MANY OF YOU FEEL, HONESTLY, THAT WE WOULDN'T
12:05PM 6 BE HERE UNLESS THEY DID IT? HONESTLY. ANYONE? OKAY. GOOD.
12:05PM 7 BECAUSE THIS PRESUMPTION OF INNOCENCE, THIS VEIL THAT COVERS
12:05PM 8 THESE GENTLEMEN AS THEY SIT HERE RIGHT NOW, THAT IS SOMETHING
12:05PM 9 THAT IS AFFORDED TO US IN THE LAW TO PROTECT EACH ONE OF US.
12:06PM 10 IT'S FOR ME, IT'S FOR JUDGE SCHELL, IT'S FOR EVERY SINGLE ONE
12:06PM 11 OF YOU. BECAUSE IN OUR LAW YOU'VE GOT TWO SIDES; YOU'VE GOT
12:06PM 12 THE PROSECUTION, AND YOU HAVE THE DEFENSE. YOU'VE GOT LOTS
12:06PM 13 OF RESOURCES ON THIS SIDE, AND THEN YOU HAVE THINGS IN THE
12:06PM 14 LAW TO TRY TO LEVEL THE PLAYING FIELD.

12:06PM 15 WE DON'T HAVE TO DO ANYTHING. IT'S NOT OUR BURDEN
12:06PM 16 TO TAKE THE STAND AND TESTIFY, LIKE MR. WHALEN TALKED TO YOU
12:06PM 17 ABOUT. AND YOU ARE GOING TO GET AN INSTRUCTION. AND, HONESTLY,
12:06PM 18 IF YOU CAN'T SET THAT ASIDE AND FOLLOW THE LAW ON THAT ONE
12:06PM 19 THING--AND THERE'S A LOT OF PEOPLE THAT CAN'T. THEY WANT TO
12:06PM 20 HEAR FROM OUR SIDE--THIS IS NOT A CIVIL CASE. THE SCALES OF
12:06PM 21 JUSTICE IS A DIFFERENT BURDEN. IF YOU TILT THE SCALES IN YOUR
12:06PM 22 FAVOR, YOU WIN.

12:06PM 23 WE'RE NOT WEIGHING ANYTHING HERE, FOLKS. THEY HAVE
12:06PM 24 TO PROVE EACH AND EVERY ELEMENT BEYOND A REASONABLE DOUBT
12:06PM 25 WITHOUT OUR HELP. DOES EVERYBODY UNDERSTAND THAT? DOES

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT VEGA

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12:07PM 1 ANYBODY HAVE A QUESTION ON THAT? THAT'S SUPER IMPORTANT THAT
12:07PM 2 WE UNDERSTAND THAT.

12:07PM 3 AND THE ONLY WAY THAT THAT VEIL, THAT CLOAK OF THE
12:07PM 4 PRESUMPTION OF INNOCENCE CAN BE REMOVED FROM EACH ONE OF OUR
12:07PM 5 CLIENTS IS IF THE GOVERNMENT PROVES EACH AND EVERY ONE OF THE
12:07PM 6 ELEMENTS OF THEIR CASE BEYOND A REASONABLE DOUBT WITH RESPECT
12:07PM 7 TO EACH AND EVERY ONE OF THESE GENTLEMEN.

12:07PM 8 SO CRASH COURSE IN CRIMINAL LAW. IF NOTHING ELSE, I
12:07PM 9 WANT EVERYBODY TO LEAVE HERE UNDERSTANDING WE'VE GOT THE BEST
12:07PM 10 SYSTEM GOING. OKAY? THE PRESUMPTION OF INNOCENCE IS SOMETHING
12:07PM 11 THAT IS A VERY POWERFUL PROTECTION FOR OUR INDIVIDUAL RIGHTS IN
12:07PM 12 THIS COUNTRY.

12:07PM 13 NUMBER 38. THAT'S YOU. AS YOU SIT HERE--AND THIS
12:08PM 14 QUESTION WAS ASKED BEFORE, BUT I'M GONNA ASK IT AGAIN. AS YOU
12:08PM 15 SIT HERE, I'M GONNA ASK THAT YOU RENDER YOUR VERDICT IN THIS
12:08PM 16 CASE. WHAT IS YOUR VERDICT?

12:08PM 17 A. AT THIS MOMENT?

12:08PM 18 Q. YES.

12:08PM 19 A. NOT GUILTY. NOTHING HAS BEEN PRESENTED.

12:08PM 20 Q. OKAY.

12:08PM 21 NUMBER 40, DID YOU HEAR WHAT HE SAID? "NOT GUILTY."
12:08PM 22 NOTHING HAS BEEN PRESENTED. WHY IS IT THAT THEY'RE NOT GUILTY?

12:08PM 23 A. [38] BECAUSE THE LAW STATES THAT THEY'RE INNOCENT
12:08PM 24 UNTIL PROVEN GUILTY.

12:08PM 25 Q. BECAUSE OF THE PRESUMPTION OF INNOCENCE. RIGHT? AND

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT VEGA

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12:08PM 1 AS WE SIT HERE NOW, EACH ONE OF THEM IS NOT GUILTY. OKAY?

12:08PM 2 THANK YOU.

12:08PM 3 NONE OF YOU WILL EVER SEE ON A CRIMINAL VERDICT FORM
12:08PM 4 THE WORD "INNOCENT." YOU'RE NOT GONNA SEE IT, BECAUSE THAT'S
12:08PM 5 NOT THE BURDEN. THEIR BURDEN IS TO PROVE BEYOND A REASONABLE
12:08PM 6 DOUBT THAT THE PERSON IS GUILTY. IF THEY CAN'T MEET THEIR
12:09PM 7 BURDEN, WHAT DOES THE VERDICT FORM SAY? IT SAYS "NOT GUILTY."
12:09PM 8 THAT'S NOT THE SAME AS "INNOCENT." YOU MAY BELIEVE THAT A
12:09PM 9 PERSON HAS DONE SOMETHING, YOU MAY BELIEVE THAT A PERSON HAS
12:09PM 10 BROKEN A LAW, HAS VIOLATED YOUR MORAL CODE, HAS DONE SOMETHING
12:09PM 11 THAT YOU DON'T AGREE WITH, BUT IF THEY DON'T PROVE THE ELEMENTS
12:09PM 12 OF THEIR CASE, YOU HAVE TO VOTE "NOT GUILTY." ALL YOU ARE
12:09PM 13 SAYING IS, "THEY DIDN'T MEET THEIR BURDEN."

12:09PM 14 THE ONLY THING WE WANT AS DEFENSE ATTORNEYS IN A
12:09PM 15 CASE IS FOR THE PEOPLE THAT ULTIMATELY TAKE THOSE SEATS OVER
12:09PM 16 THERE TO BE HONEST WITH THEMSELVES ABOUT THEIR FEELINGS, IF
12:09PM 17 THEY HAVE FEELINGS THAT WOULD AFFECT THEIR ABILITY TO SIT AS
12:09PM 18 A JUROR AND TO LISTEN TO THE EVIDENCE. WHAT IS EVIDENCE IN
12:09PM 19 A CRIMINAL CASE? RAISE YOUR HAND IF YOU KNOW. ANYONE? DOES
12:10PM 20 ANYONE KNOW WHAT "EVIDENCE" IS? FOLKS, EVIDENCE IS WHAT COMES
12:10PM 21 IN THROUGH WITNESSES ON THE STAND. THAT'S WHY STRONG FEELINGS
12:10PM 22 MATTER. BECAUSE WE DON'T WANT YOU BRINGING IN YOUR STUFF AND
12:10PM 23 MAKING YOUR DECISIONS WITH NOT ONLY THE EVIDENCE THAT COMES IN
12:10PM 24 BUT ALSO YOUR LIFE'S EXPERIENCE IF IT'S SKEWING YOU ONE WAY OR
12:10PM 25 THE OTHER. THAT'S WHY STRONG FEELINGS MATTER. WE DON'T WANT

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT VEGA

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12:10PM 1 YOUR STRONG FEELINGS TO BE EVIDENCE IN THE CASE. DOES
12:10PM 2 EVERYBODY UNDERSTAND THAT? THAT'S WHY IT'S SO IMPORTANT. WE
12:10PM 3 DON'T WANT IT TO BE CONSIDERED AS EVIDENCE. SOMETIMES IT WILL
12:10PM 4 CLOUD YOUR JUDGMENT AND YOU MAY RENDER A VERDICT IN A CRIMINAL
12:10PM 5 CASE ON SOMETHING LESS THAN BEYOND A REASONABLE DOUBT. THAT'S
12:10PM 6 WHAT WE'RE TRYING TO AVOID. WE DON'T WANT YOU MAKING YOUR
12:10PM 7 DECISION BASED ON THE PREPONDERANCE-OF-THE-EVIDENCE STANDARD;
12:10PM 8 WE WANT YOU TO MAKE YOUR DECISION BASED UPON THE BEYOND-A-
12:10PM 9 REASONABLE-DOUBT STANDARD. OKAY?

12:10PM 10 THAT BRINGS UP MY LAST POINT. HOW CAN YOU, IN A
12:11PM 11 CRIMINAL CASE, RENDER A VERDICT OF "NOT GUILTY"? CAN SOMEBODY
12:11PM 12 GIVE ME JUST ONE OF THE WAYS THAT THAT CAN BE DONE? NO RIGHT
12:11PM 13 OR WRONG ANSWER. NUMBER 8.

12:11PM 14 A. IF THEY HAVEN'T PROVEN ALL THREE ELEMENTS, THEN IT'S
12:11PM 15 "NOT GUILTY."

12:11PM 16 Q. OKAY. IF THEY HAVEN'T PROVED ALL THREE ELEMENTS.

12:11PM 17 NUMBER 6, YOU HEARD IF THEY HAVEN'T PROVED ALL THREE
12:11PM 18 OF THE ELEMENTS--AND THAT WAS THE HYPOTHETICAL HE GAVE, THREE
12:11PM 19 ELEMENTS. WHAT DO YOU THINK ABOUT THAT?

12:11PM 20 GO AHEAD AND HAND HER THE MIKE.

12:11PM 21 A. IT WOULD BE "NOT GUILTY."

12:11PM 22 Q. IT WOULD BE "NOT GUILTY." CORRECT? OKAY.

12:11PM 23 NUMBER 5, WHAT ARE SOME OF THE REASONS THAT THEY
12:11PM 24 COULDN'T PROVE EACH OF THE ELEMENTS TO YOU AS A JUROR?

12:11PM 25 A. IF IT WASN'T TRUE, THEN THEY COULDN'T PROVE IT.

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT VEGA

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12:11PM 1 Q. OKAY. IF IT WASN'T TRUE. SO, IN OTHER WORDS, THE
12:12PM 2 EVIDENCE DIDN'T ADD UP ENOUGH TO YOU TO BELIEVE--YOU UNDERSTAND
12:12PM 3 AS A JUROR YOU ARE THE FINDER OF THE FACTS. YOU HAVE TO
12:12PM 4 DETERMINE FOR YOURSELF THE CREDIBILITY TO GIVE TO EACH OF THE
12:12PM 5 WITNESSES WHO TAKES THE STAND. EVERYBODY UNDERSTAND THAT? SO
12:12PM 6 IF YOU DON'T BELIEVE SOMEONE THAT TOOK THE STAND AND GAVE THE
12:12PM 7 EVIDENCE ON A PARTICULAR DEFENDANT, THEN YOU WOULD HAVE A HARD
12:12PM 8 TIME FINDING THEM GUILTY?

12:12PM 9 A. YES.

12:12PM 10 Q. BECAUSE YOU DIDN'T BELIEVE THEM. IS THAT FAIR TO SAY?

12:12PM 11 A. RIGHT.

12:12PM 12 Q. ALL RIGHT. SO CREDIBILITY--THANK YOU.

12:12PM 13 CREDIBILITY OF THE EVIDENCE OR CREDIBILITY OF THE
12:12PM 14 WITNESSES.

12:12PM 15 WHAT'S ANOTHER REASON? NUMBER 37, WHAT'S ANOTHER
12:12PM 16 REASON THAT THE GOVERNMENT MAY NOT BE ABLE TO MEET THEIR
12:12PM 17 BURDEN?

12:12PM 18 A. UM, THEY DON'T HAVE GOOD ENOUGH TESTIMONY FROM
12:12PM 19 WITNESSES TO BE ABLE TO CONVICT THE PEOPLE WHO ARE ON TRIAL.

12:12PM 20 Q. WHEN YOU SAY "GOOD ENOUGH," WHAT DO YOU MEAN?

12:13PM 21 A. TESTIMONY THAT MAKES YOU BELIEVE WHAT THEY'RE SAYING.

12:13PM 22 Q. OKAY. THANK YOU. AND UNDERSTAND THAT IT'S NOT ONLY
12:13PM 23 WHAT THESE WITNESSES SAY, BUT THEY'RE GONNA SPONSOR EVIDENCE
12:13PM 24 THAT THE GOVERNMENT IS GONNA TRY TO PUT INTO EVIDENCE. MAYBE
12:13PM 25 DRUGS, MAYBE PHOTOGRAPHS. THAT, ALSO. SO KNOWING THAT,

VOIR DIRE EXAMINATION ON BEHALF OF DEFENDANT VEGA

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12:13PM 1 NUMBER--THIRD ROW--LET'S SEE. NUMBER 17, KNOWING THAT--KNOWING
12:13PM 2 THAT SHE SAID THEY MIGHT NOT PUT ENOUGH IN, WHAT'S ANOTHER
12:13PM 3 REASON IN YOUR MIND THAT THEY MAY NOT BE ABLE TO MEET THEIR
12:13PM 4 BURDEN?

12:13PM 5 A. I'M NOT SURE. I MEAN, THAT WAS IT FOR ME.

12:13PM 6 Q. OKAY. WITNESSES. YOU DON'T BELIEVE THE WITNESSES.
12:13PM 7 WHAT ELSE?

12:13PM 8 A. [PAUSING]

12:13PM 9 Q. OKAY. THANK YOU.

12:14PM 10 NUMBER 15, I HEARD YOU SAY SOMETHING. TELL ME WHAT
12:14PM 11 YOU SAID.

12:14PM 12 A. LACK OF EVIDENCE.

12:14PM 13 Q. OKAY. LACK OF EVIDENCE. EVERYBODY HEAR THAT? LACK
12:14PM 14 OF EVIDENCE. EVERYBODY UNDERSTANDS WHAT LACK OF EVIDENCE IS.
12:14PM 15 WE DON'T SAY "LACK OF EVIDENCE." WE SAY "INSUFFICIENCY OF
12:14PM 16 EVIDENCE." RIGHT? INSUFFICIENT. EVIDENCE IS INSUFFICIENT.
12:14PM 17 SO THEY JUST MIGHT NOT HAVE ENOUGH TO CONVINCE YOU BEYOND A
12:14PM 18 REASONABLE DOUBT. MAN, IF YOU HAD THAT ONE OTHER THING, YOU
12:14PM 19 COULD HAVE GOTTEN THERE. "I DIDN'T HEAR IT, I DIDN'T SEE IT,
12:14PM 20 YOU DIDN'T PUT IT IN EVIDENCE. SO I HAVE TO VOTE "NOT GUILTY"
12:14PM 21 BECAUSE YOU DIDN'T MEET YOUR BURDEN." DOES EVERYBODY UNDERSTAND
12:14PM 22 THAT? THAT'S HOW IT WORKS. THAT'S ALL THAT WE'RE ASKING THAT
12:14PM 23 YOU DO. THAT'S ALL THAT WE'RE ASKING THAT YOU DO. BUT IT'S
12:14PM 24 GONNA REQUIRE THAT YOU PAY ATTENTION, AND IT'S GONNA REQUIRE
12:14PM 25 THAT YOU ARE HONEST WITH YOURSELF ABOUT ANY FEELINGS THAT YOU

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12:14PM 1 MAY HAVE. AND I THINK AT THIS POINT PROBABLY WHAT'S GONNA
12:14PM 2 HAPPEN IS--REMEMBER BEFORE, WHEN THE JUDGE TOOK DOWN SOME
12:14PM 3 NUMBERS? WE'RE GONNA MEET WITH SOME PEOPLE INDIVIDUALLY. IF
12:15PM 4 YOU DIDN'T RAISE YOUR NUMBER BEFORE, AND BASED ON SOMETHING
12:15PM 5 THAT ONE OF THE ATTORNEYS HAS SAID, YOU NEED TO MEET WITH THE
12:15PM 6 JUDGE INDIVIDUALLY, RAISE YOUR NUMBER. IF THERE'S ANYONE ELSE
12:15PM 7 THAT WANTS AN OPPORTUNITY TO TALK ABOUT SOMETHING THAT THEY
12:15PM 8 DON'T WANT TO DISCUSS IN PUBLIC. IS THERE ANYONE? OKAY.

12:15PM 9 THANK YOU VERY MUCH.

12:15PM 10 THE COURT: OKAY. THANK YOU, MR. PETRAZIO.

12:15PM 11 LADIES AND GENTLEMEN, I'M READY TO VISIT WITH SOME
12:15PM 12 OF YOU INDIVIDUALLY. I HAVE A CHECKMARK BY YOUR NUMBERS HERE.
12:15PM 13 SO I'LL START WITH JUROR NUMBER 2 AND THEN GO TO JUROR NUMBER 5
12:15PM 14 AND THEN, IT LOOKS LIKE, NUMBER 9.

12:15PM 15 SO WHAT I'M GOING TO ASK YOU TO DO IS STEP OUTSIDE
12:15PM 16 THE COURTROOM. YOU CAN GO BACK TO THE BIG ROOM WHERE YOU
12:15PM 17 GATHERED THIS MORNING AND WAIT THERE, AND I'LL CALL YOU IN ONE
12:15PM 18 AT A TIME, AT LEAST THOSE OF YOU WHO RAISED YOUR HAND OR SAID
12:16PM 19 YOU NEEDED TO VISIT WITH ME.

12:16PM 20 I'M GOING TO START WITH JUROR NUMBER 2. NUMBER 2,
12:16PM 21 IF YOU WILL STAY HERE IN THE COURTROOM, I'LL START WITH YOU,
12:16PM 22 MA'AM. THEN WE'LL GO TO NUMBER 5 AND THEN ON THROUGH THE LIST.
12:16PM 23 THANK YOU.

12:16PM 24 [OPEN COURT, DEFENDANTS PRESENT, VENIREPERSON 2
12:16PM 25 PRESENT, REMAINDER OF VENIRE NOT PRESENT]

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12:16PM 1 THE COURT: OKAY. YOU CAN BE SEATED.

12:16PM 2 JUROR NUMBER 2, WOULD YOU COME TO THE PODIUM HERE
12:16PM 3 WHERE THERE'S A MICROPHONE.

12:17PM 4 Q. JUROR NUMBER 2, I THINK YOU RAISED YOUR HAND WHEN I
12:17PM 5 ASKED WHETHER OR NOT ANY MEMBERS OF THE PANEL HAD A DOCTOR'S
12:17PM 6 APPOINTMENT IN THE NEXT TWO WEEKS THAT YOU DID NOT WANT TO
12:17PM 7 RESCHEDULE. I THINK YOU RAISED YOUR HAND.

12:17PM 8 A. YES, I DID. I THINK IT'S ON THE 17TH. AND I'M NOT
12:17PM 9 SURE IF THAT'S WITHIN THE WEEK AND A HALF--

12:17PM 10 Q. WE'LL PROBABLY BE FINISHED BY THEN. OKAY. YOU ALSO
12:17PM 11 SAID SOMETHING ABOUT HEARING.

12:17PM 12 A. YEAH. IT SEEMS PRETTY LOUD IN HERE, BUT I HAVE, LIKE,
12:17PM 13 80 PERCENT LOSS IN MY RIGHT EAR. SO I WAS JUST CONCERNED THAT,
12:17PM 14 DEPENDING ON WHERE I WOULD BE, YOU KNOW, SITTING, YOU KNOW,
12:17PM 15 WHERE THE WITNESS STAND IS, IT MAY KIND OF CAUSE A LITTLE
12:17PM 16 PROBLEM IF SOMEBODY WASN'T TALKING LOUD ENOUGH WHERE I COULDN'T
12:17PM 17 MAYBE HEAR.

12:17PM 18 Q. ALL RIGHT. NOW, WE ALL USE MICROPHONES IN HERE.
12:17PM 19 HAVE YOU BEEN ABLE TO HEAR EVERYONE WHO HAS BEEN SPEAKING?

12:17PM 20 A. THERE'S BEEN SOME PEOPLE THAT'S TALKED A LITTLE LOW,
12:17PM 21 YOU KNOW, WHERE MAYBE ONE OF THE ATTORNEYS SAID SOMETHING THAT
12:18PM 22 WASN'T REAL CLEAR. AS FAR AS, YOU KNOW, PEOPLE BEING DISTANT
12:18PM 23 OR KIND OF THE WAY THEY'RE SITTING, IT KIND OF SOMETIMES MESSES
12:18PM 24 UP MY HEARING A LITTLE. SO I JUST WANTED TO BRING IT UP, YOU
12:18PM 25 KNOW.

INDIVIDUAL VOIR DIRE QUESTIONING

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12:18PM 1 Q. OKAY. WELL, THE LAWYERS WILL BE QUESTIONING THE
12:18PM 2 WITNESSES FROM WHERE YOU ARE STANDING, USING THAT MICROPHONE.
12:18PM 3 THE WITNESSES WILL BE SITTING RIGHT OVER HERE TO MY LEFT, AND
12:18PM 4 THERE'S A MICROPHONE THERE. AND YOU WOULD BE SITTING THERE
12:18PM 5 IN THE JURY BOX.

12:18PM 6 AS FAR AS YOUR DOCTOR'S APPOINTMENT, I DON'T THINK
12:18PM 7 WE'LL STILL BE IN TRIAL ON THE 17TH.

12:18PM 8 A. THAT'S FINE. I JUST WANTED TO BRING IT TO YOUR
12:18PM 9 ATTENTION.

12:18PM 10 THE COURT: OKAY.

12:18PM 11 I'LL ASK THE LAWYERS IF THEY HAVE ANY QUESTIONS FOR
12:18PM 12 YOU.

12:18PM 13 MS. BATSON: NONE FROM THE GOVERNMENT, YOUR HONOR.

12:18PM 14 THE COURT: NO QUESTIONS? OKAY.

12:18PM 15 THANK YOU, MA'AM.

12:18PM 16 ACTUALLY, BEFORE WE GET TO NUMBER 5, I HAD A NOTE
12:18PM 17 THAT JUROR NUMBER 4 TALKED ABOUT HOW HE FELT ABOUT SOMEONE WHO
12:18PM 18 IS ACCUSED OF A CRIME WHO DID NOT TESTIFY. I DON'T REMEMBER,
12:19PM 19 BUT I THINK THAT WAS MR. WHALEN'S QUESTIONING. DO YOU WANT TO
12:19PM 20 BRING HIM IN AND ASK HIM ANY MORE QUESTIONS?

12:19PM 21 MR. WHALEN: WHAT NUMBER WAS HE AGAIN, YOUR HONOR?

12:19PM 22 THE COURT: NUMBER 4. WASN'T IT 4?

12:19PM 23 MR. WHALEN: YEAH. NO, I DON'T.

12:19PM 24 THE COURT: DO YOU WANT TO KEEP HIM ON THE JURY?

12:19PM 25 MR. WHALEN: NO, I WOULD MOVE FOR CAUSE.

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12:19PM 1 THE COURT: ALL RIGHT.

12:19PM 2 LET'S SEE, MS. BATSON, DO YOU WANT TO BRING HIM IN
12:19PM 3 AND ASK HIM ANY QUESTIONS?

12:19PM 4 MS. BATSON: YES, YOUR HONOR. I DON'T BELIEVE HE
12:19PM 5 WAS DEFINITIVE IN HIS ANSWERS.

12:19PM 6 THE COURT: OKAY.

12:19PM 7 WOULD YOU ASK NUMBER 4 TO COME IN.

12:20PM 8 Q. JUROR NUMBER 4, WOULD YOU COME TO THE PODIUM THERE.
12:20PM 9 IF YOU ARE CHOSEN ON THE JURY, I'LL INSTRUCT YOU THAT THE LAW
12:20PM 10 DOESN'T REQUIRE A DEFENDANT TO PROVE HIS INNOCENCE OR PRODUCE
12:20PM 11 ANY EVIDENCE AT ALL, AND YOU CAN'T INFER ANYTHING FROM THE
12:20PM 12 ELECTION OF A DEFENDANT NOT TO TESTIFY. YOU JUST CANNOT
12:20PM 13 CONSIDER THAT FOR ANY PURPOSE.

12:20PM 14 NOW, I THINK YOU SAID THAT YOU WOULD EXPECT SOMEONE
12:21PM 15 ACCUSED OF A CRIME, IF THEY DID NOT COMMIT THE CRIME, TO
12:21PM 16 TESTIFY. CORRECT?

12:21PM 17 A. YES, SIR.

12:21PM 18 Q. OKAY. ALL RIGHT. CAN YOU FOLLOW MY INSTRUCTION THAT--
12:21PM 19 NOTWITHSTANDING THAT FEELING THAT IF YOU ARE FALSELY ACCUSED
12:21PM 20 OF SOMETHING YOU WOULD SAY SOMETHING ABOUT IT, CAN YOU PUT THAT
12:21PM 21 ASIDE AND FOLLOW MY INSTRUCTION THAT YOU CANNOT INFER ANYTHING
12:21PM 22 FROM THE ELECTION OF A DEFENDANT NOT TO TESTIFY?

12:21PM 23 A. I JUST THINK IT'S VERY DIFFICULT TO DO. I GUESS THE
12:21PM 24 ANSWER IS "NO."

12:21PM 25 Q. OKAY.

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12:21PM 1 A. I THINK I STILL HAVE THAT PREJUDICE.

12:21PM 2 THE COURT: OKAY. ALL RIGHT.

12:21PM 3 MR. GONZALEZ OR MS. BATSON, DO YOU HAVE ANY

12:21PM 4 QUESTIONS?

12:21PM 5 MS. BATSON: NO, YOUR HONOR.

12:21PM 6 THE COURT: OKAY.

12:21PM 7 ANY QUESTIONS BY DEFENSE COUNSEL?

12:21PM 8 MR. WHALEN: NO, YOUR HONOR.

12:21PM 9 THE COURT: NO.

12:21PM 10 MR. KEMP: NO, YOUR HONOR.

12:21PM 11 THE COURT: ALL RIGHT.

12:21PM 12 THANK YOU, SIR.

12:22PM 13 MR. WHALEN, YOU ARE MOVING TO STRIKE JUROR NUMBER 4

12:22PM 14 FOR CAUSE?

12:22PM 15 MR. WHALEN: THAT'S CORRECT, YOUR HONOR.

12:22PM 16 THE COURT: ALL RIGHT. I'M GOING TO GRANT

12:22PM 17 MR. WHALEN'S MOTION.

12:22PM 18 MS. BATSON: NO OBJECTION, YOUR HONOR.

12:22PM 19 THE COURT: OKAY. NO OBJECTION BY THE GOVERNMENT.

12:22PM 20 I'LL STRIKE JUROR NUMBER 4 FOR CAUSE BASED UPON HIS STATEMENT

12:22PM 21 TO THE COURT THAT HE COULD NOT--THAT HE WOULD CONSIDER, RATHER,

12:22PM 22 AN ELECTION BY A DEFENDANT NOT TO TESTIFY.

12:22PM 23 NUMBER 5.

12:22PM 24 Q. JUROR NUMBER 5, I BELIEVE YOU RAISED YOUR HAND WHEN

12:22PM 25 I ASKED THE QUESTION ABOUT WHETHER YOU HAD BEEN INVOLVED IN

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12:23PM 1 A CRIMINAL MATTER THAT CONCERNED YOU OR A FAMILY MEMBER OR A
12:23PM 2 CLOSE FRIEND THAT WENT TO COURT AND THAT EITHER YOU OR A FAMILY
12:23PM 3 MEMBER OR A CLOSE FRIEND WAS INVOLVED AS A DEFENDANT, A WITNESS
12:23PM 4 OR A VICTIM.

12:23PM 5 A. YES.

12:23PM 6 Q. WOULD YOU TELL ME ABOUT THAT?

12:23PM 7 A. MY MOTHER-IN-LAW IS IN A SENIOR LIVING CENTER HERE IN
12:23PM 8 PLANO, AND WE DISCOVERED MONEY AND THINGS WERE MISSING FROM
12:23PM 9 HER, AND WE PUT UP A CAMERA TO SEE IF WE COULD FIND OUT WHO IT
12:23PM 10 WAS. AND WE DISCOVERED A WORKER FROM THIS FACILITY WAS COMING
12:23PM 11 IN AND STEALING FROM HER IN THE AMOUNT OF \$80,000.

12:23PM 12 Q. 80?

12:23PM 13 A. \$80,000 IN JEWELRY AND CASH. AND THE PERSON HAS BEEN
12:23PM 14 IN JAIL SINCE APRIL AND IS GOING TO BE CONVICTED, OR SENTENCED,
12:23PM 15 I GUESS, ON DECEMBER 19TH.

12:23PM 16 Q. OKAY. ALL RIGHT. DOES THAT AFFECT YOUR FEELINGS ABOUT
12:23PM 17 BEING A JUROR IN THIS CASE?

12:24PM 18 A. UM, NO, I DON'T THINK SO.

12:24PM 19 Q. OKAY. CAN YOU FOLLOW MY INSTRUCTION THAT SOMEONE WHO
12:24PM 20 IS SIMPLY ACCUSED OF A CRIME BY INDICTMENT, THAT THAT IS NOT
12:24PM 21 ANY EVIDENCE OF GUILT?

12:24PM 22 A. RIGHT, I CAN DO THAT.

12:24PM 23 Q. OKAY. AND THAT THE GOVERNMENT HAS THE BURDEN OF
12:24PM 24 PROVING ITS CASE AGAINST THESE THREE INDIVIDUALS?

12:24PM 25 A. ABSOLUTELY.

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12:24PM 1 THE COURT: OKAY. ALL RIGHT.

12:24PM 2 MS. BATSON, ANY QUESTIONS?

12:24PM 3 MS. BATSON: NO, YOUR HONOR.

12:24PM 4 THE COURT: ANY QUESTIONS FROM DEFENSE COUNSEL?

12:24PM 5 MR. PETRAZIO: NO, YOUR HONOR.

12:24PM 6 THE COURT: NO. OKAY.

12:24PM 7 THANK YOU, MA'AM.

12:24PM 8 THE NEXT JUROR I HAVE A CHECKMARK BY IS JUROR NUMBER

12:24PM 9 9. DOES ANYONE WANT TO QUESTION ANYONE BEFORE WE GET TO JUROR

12:24PM 10 NUMBER 9? OKAY.

12:24PM 11 JUROR NUMBER 9.

12:25PM 12 Q. JUROR NUMBER 9, I BELIEVE YOU RAISED YOUR HAND WHEN I

12:25PM 13 ASKED WHETHER YOU HAD ANY EXPERIENCE INVOLVING YOURSELF OR A

12:25PM 14 FAMILY MEMBER OR A CLOSE FRIEND THAT SOMEHOW RELATES TO THE

12:25PM 15 USE OR POSSESSION OF DRUGS.

12:25PM 16 A. YES.

12:25PM 17 Q. COULD YOU TELL ME ABOUT THAT.

12:25PM 18 A. MY EX-HUSBAND SERVED TIME FOR DRUG POSSESSION. I

12:25PM 19 CURRENTLY HAVE A NIECE THAT WAS ON PROBATION, AND SHE HAS

12:25PM 20 VIOLATED HER PROBATION, FOR DRUG POSSESSION. AND I HAVE

12:25PM 21 OTHER FAMILY--EXTENDED FAMILY MEMBERS THAT WERE IN REHAB AND

12:26PM 22 WHATEVER, BUT NOTHING IN MY IMMEDIATE CLOSE FAMILY. I MEAN...

12:26PM 23 Q. OKAY. ALL RIGHT. DO YOU KNOW WHAT KIND OF DRUG YOUR

12:26PM 24 EX-HUSBAND AND YOUR NIECE WERE INVOLVED WITH?

12:26PM 25 A. MY EX-HUSBAND, IT WAS SOME TYPE OF PILLS. I DON'T KNOW

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12:26PM 1 WHAT TYPE IT WAS. IT'S BEEN SEVERAL YEARS AGO, 10 YEARS AGO.

12:26PM 2 BUT MY NIECE AND MY EX-HUSBAND'S SON, WHICH WAS ONE OF THE

12:26PM 3 PEOPLE, IS METHAMPHETAMINE. AND MY OTHER NEPHEW WAS HEROIN.

12:26PM 4 Q. OKAY.

12:26PM 5 NOW, THE ACCUSATION IN THIS CASE IS THAT THESE

12:26PM 6 THREE DEFENDANTS CONSPIRED TO POSSESS WITH INTENT TO DISTRIBUTE

12:26PM 7 METHAMPHETAMINE. TELL ME HOW YOU FEEL ABOUT BEING A JUROR IN

12:26PM 8 THIS CASE.

12:26PM 9 A. I THINK I COULD LISTEN TO THE EVIDENCE. I MEAN,

12:27PM 10 THAT'S NOT GONNA SWAY ME. I, YOU KNOW, DON'T BELIEVE IN DRUG

12:27PM 11 DISTRIBUTION OR THE USE OF IT, BUT THEY WOULD HAVE TO PROVE--

12:27PM 12 YOU KNOW, I'M NOT JUST GONNA SAY BECAUSE THEY'VE BEEN CHARGED

12:27PM 13 WITH IT THEY'RE GUILTY.

12:27PM 14 Q. OKAY. SO EVEN THOUGH THE CHARGE HERE HAS TO DO WITH

12:27PM 15 THE SAME DRUG THAT YOUR NIECE AND ANOTHER FAMILY MEMBER WERE

12:27PM 16 INVOLVED WITH, THAT'S NOT SUCH AN EMOTIONAL TRIGGER FOR YOU

12:27PM 17 THAT YOU WOULDN'T BE ABLE TO OBJECTIVELY EVALUATE THE EVIDENCE

12:27PM 18 IN THIS CASE?

12:27PM 19 A. I DON'T THINK SO, SIR.

12:27PM 20 Q. OKAY. SO CAN YOU PRESUME THE THREE INDIVIDUALS SITTING

12:27PM 21 AT COUNSEL TABLE OVER HERE WHO ARE ACCUSED INNOCENT AS THEY SIT

12:27PM 22 THERE RIGHT NOW?

12:27PM 23 A. TILL I'M SHOWN OTHERWISE, YES.

12:27PM 24 THE COURT: OKAY. ALL RIGHT.

12:28PM 25 ANY QUESTIONS FOR JUROR NUMBER 9?

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12:28PM 1 MS. BATSON: NO, YOUR HONOR.

12:28PM 2 MR. PETRAZIO: BRIEFLY, YOUR HONOR.

12:28PM 3 THE COURT: OKAY.

12:28PM 4 MR. PETRAZIO:

12:28PM 5 Q. YOU KEEP USING THE PHRASE YOU DON'T THINK SO. I
12:28PM 6 UNDERSTAND THAT THESE STRONG FEELINGS I TALKED ABOUT--IS
12:28PM 7 THAT SOMETHING THAT YOU MIGHT CONFUSE IN EITHER HOLDING THE
12:28PM 8 GOVERNMENT TO A HIGHER OR A LOWER BURDEN WITH RESPECT TO THE
12:28PM 9 EVIDENCE? DO YOU THINK THAT YOU CAN SET THOSE STRONG FEELINGS
12:28PM 10 ASIDE AND THEM NOT BE A FACTOR WHEN YOU WEIGH THE EVIDENCE?
12:28PM 11 BECAUSE YOU ARE WEIGHING THE EVIDENCE. WOULD THOSE STRONG
12:28PM 12 FEELINGS AFFECT YOU WHERE YOU MIGHT WEIGH THE EVIDENCE
12:28PM 13 DIFFERENTLY, EITHER FOR OR AGAINST THE GOVERNMENT?

12:28PM 14 A. I DON'T THINK SO.

12:28PM 15 Q. WE NEED MORE THAN "I DON'T THINK SO."

12:28PM 16 A. I KNOW. THAT WAS JUST A PHRASE. NO. I STILL SAY
12:28PM 17 I WOULD GO BY THE EVIDENCE. I MEAN, EVEN IF--LIKE YOU SAID
12:29PM 18 EARLIER, EVEN IF SOMEONE IS GUILTY, IF YOU CAN'T PROVE THEY'RE
12:29PM 19 GUILTY, THAT'S WHAT WE'RE HERE TO DECIDE. AND I DO HAVE THAT
12:29PM 20 EXPERIENCE. AND YOU ASKED ME HAD I HAD ANY CONNECTION WITH
12:29PM 21 THAT, EVEN THOUGH IT'S REMOVED AND NOT FIRST--YOU KNOW,
12:29PM 22 FIRSTHAND MYSELF.

12:29PM 23 Q. SO IT'S NOT GOING TO AFFECT YOUR ABILITY TO WEIGH THE
12:29PM 24 EVIDENCE?

12:29PM 25 A. NO, I DON'T THINK--I DON'T THINK IT WOULD.

INDIVIDUAL VOIR DIRE QUESTIONING

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12:29PM 1 MR. PETRAZIO: THANK YOU, MA'AM.

12:29PM 2 THE COURT: ALL RIGHT. THANK YOU, JUROR NUMBER 9.

12:29PM 3 JUROR NUMBER 11.

12:30PM 4 MR. HOLLIS, AFTER NUMBER 11, I'LL NEED 13, THEN 15.

12:30PM 5 Q. JUROR NUMBER 11, I THINK YOU TOLD ONE OF THE COURT
12:30PM 6 SECURITY OFFICERS THAT YOU NEEDED TO TELL ME SOMETHING ABOUT
12:30PM 7 A PROBLEM YOU MAY HAVE WITH A CAREGIVER.

12:30PM 8 A. YES. I HAVE THREE YOUNG CHILDREN. MY HUSBAND IS ABLE
12:30PM 9 TO TAKE CARE OF THEM THIS WEEK FOR THE TIME THAT THEY WOULD BE
12:30PM 10 OUT OF SCHOOL AND I COULD GET HOME. BUT NEXT WEEK, STARTING
12:30PM 11 MONDAY, HE WILL BE OUT OF TOWN AND I DON'T REALLY HAVE SOMEBODY
12:30PM 12 THAT I CAN RELY ON FOR EVERY DAY.

12:30PM 13 Q. OKAY. WHAT TIME DO YOUR CHILDREN GET HOME?

12:30PM 14 A. SCHOOL GETS OUT AT 2:50.

12:31PM 15 Q. OKAY. ALL RIGHT. YOU ARE A PRESCHOOL EDUCATOR, BUT
12:31PM 16 RIGHT NOW YOU ARE NOT WORKING?

12:31PM 17 A. I'M UNEMPLOYED. SO I'M THE MAIN CAREGIVER FOR MY
12:31PM 18 CHILDREN. SO WE DON'T HAVE ANYBODY HIRED FOR AFTER SCHOOL.

12:31PM 19 Q. OKAY. AND HOW OLD ARE YOUR KIDS?

12:31PM 20 A. I HAVE AN 11-YEAR-OLD, A 12-YEAR-OLD AND A 14-YEAR-OLD.

12:31PM 21 THE COURT: ALL RIGHT.

12:31PM 22 ANY QUESTIONS FOR JUROR NUMBER 11?

12:31PM 23 MS. BATSON: NO, YOUR HONOR.

12:31PM 24 MR. WHALEN: NO, YOUR HONOR.

12:31PM 25 MR. PETRAZIO: NO, YOUR HONOR.

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12:31PM 1 MR. KEMP: NO, YOUR HONOR.

12:31PM 2 THE COURT: ALL RIGHT. I'M INCLINED TO RELEASE HER.

12:31PM 3 THANK YOU, MA'AM.

12:31PM 4 THE WITNESS: THANK YOU.

12:31PM 5 THE COURT: I'M GOING TO STRIKE JUROR NUMBER 11 FOR
12:31PM 6 CAUSE SINCE SHE HAS YOUNG CHILDREN AND NO ONE TO CARE FOR THEM
12:31PM 7 NEXT WEEK.

12:31PM 8 NUMBER 13.

12:32PM 9 Q. JUROR NUMBER 13, I BELIEVE YOU RAISED YOUR HAND WHEN I
12:32PM 10 ASKED BOTH QUESTIONS, THE FIRST ONE BEING WHETHER YOU HAD BEEN
12:32PM 11 INVOLVED IN A CRIMINAL MATTER IN COURT THAT CONCERNED YOU OR A
12:32PM 12 FAMILY MEMBER OR A CLOSE FRIEND IN SOME WAY, AND THE SECOND ONE
12:32PM 13 HAD TO DO WITH AN EXPERIENCE INVOLVING YOU OR A FAMILY MEMBER
12:32PM 14 OR A CLOSE FRIEND THAT RELATES TO ILLEGAL DRUGS.

12:32PM 15 A. YES. MY SON IS A CONVICTED FELON FOR POSSESSION OF
12:32PM 16 METHAMPHETAMINE.

12:32PM 17 Q. OKAY.

12:32PM 18 A. AND MULTIPLE MISDEMEANORS FOR POSSESSION OF MARIJUANA
12:32PM 19 LEADING UP TO THE METHAMPHETAMINE.

12:32PM 20 Q. WHERE WAS HE CONVICTED?

12:32PM 21 A. COLLIN COUNTY.

12:32PM 22 Q. OKAY. HOW LONG AGO WAS THAT?

12:32PM 23 A. I THINK HIS ARREST WAS IN '04, FEBRUARY OF '04.
12:32PM 24 FEBRUARY OR MARCH OF '04.

12:33PM 25 Q. OKAY. WAS HE CONVICTED OF DISTRIBUTION OF

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12:33PM 1 METHAMPHETAMINE?

12:33PM 2 A. JUST POSSESSION OF METH.

12:33PM 3 Q. OKAY. AND YOU SAID SOMETHING ABOUT A MARIJUANA
12:33PM 4 CONVICTION?

12:33PM 5 A. HE HAD THE MISDEMEANORS LEADING UP BEFORE THAT. HE
12:33PM 6 SPENT A LONG TIME IN JUVY.

12:33PM 7 Q. OKAY. OH, IN JUVENILE?

12:33PM 8 A. JUVENILE, YES.

12:33PM 9 Q. OKAY. ALL RIGHT.

12:33PM 10 NOW, THESE THREE INDIVIDUALS ARE ACCUSED OF A
12:33PM 11 METHAMPHETAMINE CRIME. TELL ME HOW YOU FEEL ABOUT BEING A
12:33PM 12 JUROR IN THIS CASE.

12:33PM 13 A. I'VE GOT MIXED EMOTIONS ABOUT IT. IT'S--WELL, SORRY.

12:33PM 14 Q. OH, SURE. ALL RIGHT. LET ME ASK YOU: WHAT WAS THE
12:33PM 15 OUTCOME OF YOUR SON'S CASE? WHAT HAPPENED TO HIM?

12:33PM 16 A. HE SPENT TIME IN STATE PRISON.

12:33PM 17 Q. OKAY.

12:33PM 18 A. HE WAS CONVICTED FOR IT.

12:33PM 19 Q. ALL RIGHT. DO YOU HAVE AN OPINION ABOUT WHETHER
12:34PM 20 YOUR SON WAS TREATED FAIRLY OR UNFAIRLY BY LAW ENFORCEMENT
12:34PM 21 AUTHORITIES?

12:34PM 22 A. I MEAN, MINE, HE HAD IT ON HIM, HE'S GUILTY. BUT THERE
12:34PM 23 WAS ALWAYS THAT--HE WAS SAYING HE SHOULD HAVE NEVER BEEN PULLED
12:34PM 24 OVER. BUT HE HAD A HISTORY. HE FELT LIKE THEY WERE LOOKING
12:34PM 25 FOR HIM.

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12:34PM 1 I SAID, "WELL, YOU DESERVED IT, BECAUSE EVERY TIME
12:34PM 2 THEY PULLED YOU OVER, YOU HAD SOMETHING ON YOU."

12:34PM 3 IT'S KIND OF LIKE, YOU KNOW, YOU HEAR THERE'S
12:34PM 4 ACTIONS AND CONSEQUENCES. THAT WAS MY THING. HE HAD IT ON
12:34PM 5 HIM, HE KNEW WHAT HE WAS DOING, SO HE SHOULD HAVE KNOWN BETTER,
12:34PM 6 BUT...

12:34PM 7 Q. OKAY. SO YOU DON'T HAVE ANY HARD FEELINGS AGAINST LAW
12:34PM 8 ENFORCEMENT IN GENERAL?

12:34PM 9 A. NO. NO.

12:34PM 10 Q. ALL RIGHT. BUT YOU HAVE MIXED FEELINGS ABOUT WHETHER
12:34PM 11 OR NOT--AND YOU ARE NOT SURE WHETHER YOUR SON'S EXPERIENCE AND
12:34PM 12 WHAT YOU WENT THROUGH WITH HIM MIGHT AFFECT YOUR ABILITY TO
12:35PM 13 OBJECTIVELY EVALUATE THE EVIDENCE IN THIS CASE?

12:35PM 14 A. I WOULD HOPE IT WOULDN'T. I WOULD REALLY HOPE THAT
12:35PM 15 I COULD BE OBJECTIVE ENOUGH. BECAUSE, YOU KNOW, BEING IN THE
12:35PM 16 JOB THAT I DO, I MEAN, WE SEE--IN THE EMERGENCY ROOM I SEE ALL
12:35PM 17 DIFFERENT TYPES OF PATIENTS, WHERE THE DRIVER WAS DRUNK-DRIVING
12:35PM 18 AND KILLED A FAMILY, ALL BUT ONE, BUT YOU STILL HAVE TO TREAT
12:35PM 19 THAT PERSON THE SAME EXACT WAY AS ANYBODY. SO WE HAVE TO BE
12:35PM 20 NONJUDGMENTAL IN WHAT WE DO. SO I WOULD HOPE I COULD BE THAT
12:35PM 21 WAY.

12:35PM 22 Q. OKAY. ARE YOU UNSURE WHETHER YOU COULD BE THAT WAY?

12:35PM 23 A. I BELIEVE I COULD BE. I BELIEVE I COULD BE
12:35PM 24 NONJUDGMENTAL, JUST STICK TO THE FACTS.

12:35PM 25 Q. OKAY. NOW, IF YOU ARE CHOSEN AS A JUROR AND EVIDENCE

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12:35PM 1 IS PRESENTED AND WE GET INTO THE TESTIMONY AND THE EVIDENCE AND
12:35PM 2 CONSIDERING THE CHARGE HERE, WHICH IS AGREEING TO DISTRIBUTE
12:36PM 3 METHAMPHETAMINE, IS THAT GOING TO BRING BACK MEMORIES OF YOUR
12:36PM 4 SON'S EXPERIENCE AND MIGHT EMOTIONALLY AFFECT YOU?

12:36PM 5 A. I DON'T--I DON'T--NO, I DON'T THINK IT WILL. I THINK
12:36PM 6 BECAUSE HE WASN'T A DISTRIBUTOR, HE WAS A USER, I DON'T THINK--
12:36PM 7 IT'S A DIFFERENT TYPE OF SITUATION WITH THAT THEN.

12:36PM 8 Q. OKAY. ALL RIGHT. COULD YOU BE A FAIR JUROR TO THE
12:36PM 9 THREE INDIVIDUALS WHO ARE ACCUSED HERE?

12:36PM 10 A. I BELIEVE I COULD BE. YES, SIR, I COULD BE.

12:36PM 11 Q. CAN YOU PRESUME THEM INNOCENT AS THEY SIT THERE RIGHT
12:36PM 12 NOW?

12:36PM 13 A. YES.

12:36PM 14 Q. WOULD YOU HOLD THE GOVERNMENT TO ITS BURDEN OF PROOF?

12:36PM 15 A. RIGHT. THEY HAVE TO PROVE THAT THEY AREN'T INNOCENT.

12:36PM 16 Q. THEY HAVE TO PROVE BEYOND A REASONABLE DOUBT--

12:36PM 17 A. BEYOND A REASONABLE DOUBT, CORRECT.

12:36PM 18 Q. --THAT THEY DID WHAT THEY ARE ACCUSED OF IN THE
12:36PM 19 INDICTMENT.

12:36PM 20 A. OKAY.

12:36PM 21 THE COURT: ALL RIGHT.

12:36PM 22 MS. BATSON, DO YOU HAVE ANY QUESTIONS FOR JUROR
12:36PM 23 NUMBER 13?

12:36PM 24 MS. BATSON: NO, YOUR HONOR.

12:37PM 25 THE COURT: MR. WHALEN?

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12:37PM 1 MR. WHALEN:

12:37PM 2 Q. MA'AM, OBVIOUSLY, YOU GOT A LITTLE EMOTIONAL.

12:37PM 3 A. RIGHT.

12:37PM 4 Q. AND, OBVIOUSLY, THAT'S THE CONCERN. YOU'VE HAD THESE
12:37PM 5 EXPERIENCES THAT CAUSE YOU SOME EMOTION. SO, AS YOU SIT HERE
12:37PM 6 NOW, YOU THINK YOU CAN BE A FAIR JUROR?

12:37PM 7 A. YES, SIR.

12:37PM 8 Q. OUR CONCERN IS THAT AS THIS TRIAL GOES ON, THAT MAY
12:37PM 9 CHANGE FOR YOU. IF IT CHANGES FOR YOU, THERE'S NOT ANYTHING WE
12:37PM 10 CAN--YOU KNOW, IT MAY BE TOO LATE FOR YOU TO SAY, "NO, I CAN'T
12:37PM 11 DO THIS THING." OBVIOUSLY, YOU ARE GETTING EMOTIONAL. ARE YOU
12:37PM 12 CONFIDENT YOU CAN DO THIS JOB WITHOUT LETTING THOSE EMOTIONS
12:37PM 13 COME INTO PLAY? CAN YOU GUARANTEE US THAT YOU CAN DO THAT?

12:37PM 14 A. I THINK I CAN. THE EMOTION IS BECAUSE HE DESTROYED
12:37PM 15 HIS LIFE. HE'S HAVING TO GO TO CHINA NOW TO GET A JOB. HE'S
12:37PM 16 LEAVING. THAT'S WHERE IT'S COMING FROM. YES, THE EMOTIONS,
12:38PM 17 AGAIN, ARE BECAUSE HIS DECISIONS WRECKED HIS LIFE. SO, YES,
12:38PM 18 I THINK I CAN BE--I CAN BE OBJECTIVE IN THIS CASE.

12:38PM 19 Q. MY LAST QUESTION IS--I KNOW YOU MADE THE DISTINCTION
12:38PM 20 THAT SINCE THIS CASE DIDN'T HAVE TO DO WITH POSSESSION, IT HAD
12:38PM 21 TO DO WITH DISTRIBUTION. MY QUESTION WOULD BE: OBVIOUSLY, IF
12:38PM 22 THERE'S NOT DISTRIBUTION, THEN PEOPLE CAN'T POSSESS IT AND USE
12:38PM 23 IT. SO IS THERE ANY CHANCE THAT BECAUSE THERE'S DISTRIBUTION,
12:38PM 24 THAT YOU WOULD FEEL THAT YOU NEED TO PUNISH THE DISTRIBUTOR OF
12:38PM 25 THE METHAMPHETAMINE BECAUSE IF IT WASN'T FOR THEM, THEN YOUR

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12:38PM 1 SON WOULD NEVER HAVE GOTTEN STARTED AND BEEN ABLE TO USE IT?

12:38PM 2 A. NO. BECAUSE THE DECISION TO USE IT WAS STRICTLY HIS.

12:38PM 3 I MEAN, HE MADE THE DECISION. IF IT'S OUT THERE, IT'S STILL

12:38PM 4 HIS DECISION WHETHER OR NOT HE USES IT.

12:38PM 5 MR. WHALEN: THAT'S ALL I HAVE, YOUR HONOR.

12:38PM 6 THE COURT: OKAY.

12:38PM 7 MR. KEMP, ANY QUESTIONS?

12:38PM 8 MR. KEMP: NO, YOUR HONOR.

12:38PM 9 THE COURT: MR. PETRAZIO?

12:38PM 10 MR. PETRAZIO: JUST A COUPLE.

12:38PM 11 Q. YOU MENTIONED THAT YOUR SON STARTED OFF USING MARIJUANA.

12:38PM 12 A. YES, SIR.

12:38PM 13 Q. CORRECT?

12:38PM 14 A. YES, SIR.

12:38PM 15 Q. DO YOU KNOW HOW HE MADE THE SWITCH TO METHAMPHETAMINE?

12:39PM 16 A. UM, I'M REALLY NOT SURE. HE SAID HE BOUGHT IT TO--WHEN

12:39PM 17 MY MOM DIED. HE WAS SUPPOSED TO BE WATCHING HER, AND HE WASN'T.

12:39PM 18 HE WAS OUT DRINKING WITH HIS FRIENDS. AND HE FELT RESPONSIBLE.

12:39PM 19 SO HE SAID HE BOUGHT THE METHAMPHETAMINE SO HE COULD JUST

12:39PM 20 ESCAPE, BUT HE NEVER USED IT.

12:39PM 21 Q. OKAY.

12:39PM 22 A. SO...

12:39PM 23 Q. LET ME ASK YOU THIS: AFTER MR. WHALEN TALKED TO YOU

12:39PM 24 ABOUT MAYBE WANTING TO PUNISH THOSE THAT ARE--AND THERE'S GOING

12:39PM 25 TO BE A LOT OF THEM THAT DON'T HAVE ANYTHING TO DO NECESSARILY

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12:39PM 1 WITH THE PEOPLE SITTING AT THIS TABLE, BUT THE CONSPIRACY IN
12:39PM 2 GENERAL, ABOUT THE QUANTITY AND THE LIVES--OBVIOUSLY, YOU ARE
12:39PM 3 GOING TO HEAR EVIDENCE ABOUT LIVES BEING AFFECTED. DO YOU
12:39PM 4 THINK YOU CAN SET ASIDE THE FACT THAT YOUR SON WAS AN END
12:39PM 5 USER FROM THE WHOLE DRUG PROCESS, FROM PEOPLE MAKING IT, PEOPLE
12:39PM 6 SELLING IT, PEOPLE SHARING IT, PEOPLE USING IT? YOU CAN SET
12:40PM 7 THAT ASIDE AND THAT'S NOT GONNA AFFECT HOW YOU MAKE YOUR
12:40PM 8 DECISION ON THE EVIDENCE IN THIS CASE?

12:40PM 9 A. I THINK I CAN, YES.

12:40PM 10 Q. YOU "THINK" YOU CAN?

12:40PM 11 A. YES, I CAN.

12:40PM 12 Q. DO YOU REMEMBER MY EXAMPLE--

12:40PM 13 A. THERE'S NO THINKING. YOU HAVE TO--

12:40PM 14 Q. --ABOUT THE GUY THAT GOT HIT BY THE DRUNK DRIVER?

12:40PM 15 A. RIGHT.

12:40PM 16 Q. I'M SURE HE WAS THINKING THE SAME THING. BUT HE WANTED
12:40PM 17 TO PROVE SOMETHING TO HIMSELF. YOU ARE NOT SAYING THIS SO YOU
12:40PM 18 CAN PROVE THAT YOU CAN HANDLE THIS, ARE YOU?

12:40PM 19 A. NO.

12:40PM 20 Q. 'CAUSE THERE'S NOTHING WRONG WITH HAVING THOSE FEELINGS.

12:40PM 21 A. RIGHT. NO. I WOULD NOT SAY THAT, YOU KNOW, I COULD DO
12:40PM 22 IT IF I DIDN'T THINK I COULD.

12:40PM 23 MR. PETRAZIO: NO FURTHER QUESTIONS, YOUR HONOR.

12:40PM 24 THE COURT: OKAY.

12:40PM 25 THANK YOU, MA'AM.

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12:40PM 1 OKAY. THAT WAS JUROR NUMBER 13. ANYONE WANT TO SAY
12:40PM 2 ANYTHING ABOUT JUROR NUMBER 13?

12:41PM 3 OKAY. WE'LL MOVE ON TO JUROR NUMBER 15.

12:41PM 4 Q. JUROR NUMBER 15, YOU RAISED YOUR HAND WHEN I ASKED
12:41PM 5 THE QUESTION ABOUT WHETHER YOU HAD BEEN INVOLVED IN A CRIMINAL
12:41PM 6 MATTER THAT CONCERNED YOU OR A CLOSE FRIEND OR A FAMILY MEMBER
12:41PM 7 THAT WENT TO COURT AND THAT YOUR INVOLVEMENT WAS EITHER AS A
12:41PM 8 DEFENDANT, A WITNESS OR A VICTIM. AND YOU RAISED YOUR HAND
12:41PM 9 WHEN I ASKED THE QUESTION ABOUT WHETHER YOU OR A FAMILY MEMBER
12:41PM 10 OR A CLOSE FRIEND HAD HAD ANY EXPERIENCE THAT RELATES TO DRUGS.
12:41PM 11 COULD YOU TELL ME ABOUT YOUR RESPONSE?

12:41PM 12 A. YES, SIR. I TOOK A DRUG CONVICTION IN 2007 IN DENTON
12:41PM 13 COUNTY.

12:41PM 14 Q. OKAY.

12:41PM 15 A. FOR POSSESSION OF MARIJUANA.

12:42PM 16 Q. OKAY. AND THAT WAS FOR YOU?

12:42PM 17 A. YES, SIR.

12:42PM 18 Q. OKAY. ALL RIGHT. WHAT WAS THE OUTCOME OF YOUR CASE?

12:42PM 19 A. I PLED OUT AND DID 30 DAYS IN JAIL.

12:42PM 20 Q. ALL RIGHT. DO YOU HAVE AN OPINION ABOUT WHETHER YOU
12:42PM 21 WERE TREATED FAIRLY OR UNFAIRLY BY LAW ENFORCEMENT AND BY THE
12:42PM 22 DENTON COUNTY DA'S OFFICE?

12:42PM 23 A. I BELIEVE I GOT A FAIR SHAKE. EVIDENCE WASN'T, I DON'T
12:42PM 24 BELIEVE, PROPERLY PRESENTED AGAINST ME, BUT I PLED GUILTY
12:42PM 25 NONETHELESS.

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12:42PM 1 Q. OKAY. SO YOU DIDN'T HAVE A TRIAL; YOU PLED GUILTY.

12:42PM 2 A. YES, SIR.

12:42PM 3 Q. AND THE JUDGE SENTENCED YOU. IT WAS PROBABLY AN
12:42PM 4 AGREEMENT BETWEEN THE DA'S OFFICE AND--

12:42PM 5 A. AND MY ATTORNEY.

12:42PM 6 Q. ALL RIGHT. IS THERE ANYTHING ABOUT THAT EXPERIENCE
12:43PM 7 THAT WOULD AFFECT YOUR FEELINGS ABOUT BEING A JUROR IN THIS
12:43PM 8 CASE?

12:43PM 9 A. MAYBE IN THE BACK OF MY MIND. I FELT LIKE THE OFFICERS
12:43PM 10 THAT ARRESTED ME, AS I SAID EARLIER, DIDN'T PRESENT EVIDENCE
12:43PM 11 AS--THEY DIDN'T TAKE THE SACK AND LAY IT UP THERE ON THE TABLE
12:43PM 12 TO SHOW EVERYBODY, BECAUSE I DIDN'T GO TO TRIAL. I CHOSE NOT
12:43PM 13 TO GO TO TRIAL. I FELT--I DON'T KNOW.

12:43PM 14 Q. IF YOU DON'T GO TO TRIAL--

12:43PM 15 A. I UNDERSTAND, I UNDERSTAND. I DON'T KNOW HOW TO ANSWER
12:43PM 16 THIS, SIR.

12:43PM 17 Q. OKAY. I GUESS MY QUESTION IS: DO YOU FEEL THAT YOU
12:43PM 18 COULD BE A FAIR JUROR FOR THE GOVERNMENT IN THIS CASE?

12:44PM 19 A. UM, IN A DRUG TRIAL, I--I KIND OF WEIGH IT BOTH WAYS,
12:44PM 20 BEING AS I'VE BEEN CONVICTED MYSELF. I DON'T THINK THAT I CAN
12:44PM 21 PUT BLAME ON SOMEBODY WHEN I DID THE SAME THING. NOT THAT I'M
12:44PM 22 IN THE CASE THAT THEY'RE IN, BUT...

12:44PM 23 Q. OKAY. SO YOU ARE SAYING THAT EVEN IF THE GOVERNMENT
12:44PM 24 PROVED ITS CASE AGAINST ONE OR MORE OF THESE INDIVIDUALS,
12:44PM 25 YOU MIGHT NOT BE ABLE TO FIND THEM GUILTY?

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12:44PM 1 A. JUST FROM MY EXPERIENCE AS TO HOW I HANDLED MY
12:44PM 2 TROUBLES. I--I PROBABLY COULD, BUT IT'S STILL IN THE BACK
12:44PM 3 OF MY MIND THAT I'VE BEEN IN TROUBLE ALSO.

12:44PM 4 Q. OKAY. WELL, THAT'S OKAY. THE QUESTION--I MEAN, YOU
12:44PM 5 WOULD BE PUTTING ON A DIFFERENT HAT. IF YOU ARE CHOSEN HERE,
12:45PM 6 YOU WOULD BE A JUROR.

12:45PM 7 A. YES, SIR.

12:45PM 8 Q. YOU ARE GOING TO BE JUDGING SOMEONE ELSE'S CASE. YOU
12:45PM 9 WOULD JUST HAVE TO MAKE A DECISION, AFTER HEARING THE EVIDENCE,
12:45PM 10 WHETHER OR NOT THE GOVERNMENT HAS CONVINCED YOU BEYOND A
12:45PM 11 REASONABLE DOUBT THAT ONE OR MORE OF THESE THREE MEN ARE GUILTY.

12:45PM 12 A. I COULD--YES, I COULD.

12:45PM 13 Q. YOU COULD--

12:45PM 14 A. I COULD BE HONEST AND FORWARD WITH EVIDENCE PRESENTED,
12:45PM 15 MAKING A DECISION.

12:45PM 16 Q. OKAY.

12:45PM 17 A. I COULD.

12:45PM 18 Q. COULD YOU FOLLOW MY INSTRUCTIONS ON PRESUMPTION OF
12:45PM 19 INNOCENCE, THAT THEY'RE PRESUMED INNOCENT--

12:45PM 20 A. YES, SIR.

12:45PM 21 Q. --UNLESS AND UNTIL PROVEN GUILTY?

12:45PM 22 A. YES, SIR.

12:45PM 23 Q. THAT THE BURDEN OF PROOF IS ON THE GOVERNMENT AND NEVER
12:45PM 24 SHIFTS TO THE DEFENDANTS?

12:45PM 25 A. YES, SIR.

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12:45PM 1 Q. COULD YOU FOLLOW THAT?

12:45PM 2 A. YES, SIR.

12:45PM 3 Q. AND THAT THE STANDARD OF PROOF THAT YOU WOULD USE TO
12:45PM 4 TEST THE EVIDENCE WOULD BE "BEYOND A REASONABLE DOUBT." IN
12:45PM 5 OTHER WORDS, YOU WOULD BE SATISFIED BEYOND A REASONABLE DOUBT
12:45PM 6 THAT THE GOVERNMENT HAS CONVINCED YOU THAT THEY DID WHAT THEY
12:46PM 7 ARE ACCUSED OF DOING.

12:46PM 8 A. YES.

12:46PM 9 THE COURT: OKAY.

12:46PM 10 MS. BATSON, DO YOU HAVE QUESTIONS?

12:46PM 11 MS. BATSON: JUST A FEW.

12:46PM 12 Q. SIR, WHILE THEY WERE QUESTIONING THE PANEL, YOU HEARD
12:46PM 13 THEM SAY IT'S IMPORTANT FOR YOU TO BE FAIR TO BOTH SIDES?

12:46PM 14 A. YES, MA'AM.

12:46PM 15 Q. AND WHAT I'M HEARING YOU SAY IS THAT IN YOUR CASE,
12:46PM 16 YOU WEREN'T HAPPY WITH THE WAY THE LAW ENFORCEMENT OFFICERS
12:46PM 17 PRESENTED YOUR CASE.

12:46PM 18 A. CORRECT.

12:46PM 19 Q. AND YOU HEARD THE JUDGE READ OUR WITNESS LIST. THERE
12:46PM 20 WERE NUMEROUS LAW ENFORCEMENT LISTED ON THERE.

12:46PM 21 A. MANY, YES.

12:46PM 22 Q. DO YOU THINK THAT YOU COULD PUT ASIDE WHAT HAPPENED TO
12:46PM 23 YOU AND BE FAIR AND IMPARTIAL TO THE GOVERNMENT AS WELL AS TO
12:46PM 24 THE DEFENSE?

12:46PM 25 A. I DO BELIEVE I COULD. BUT AT THE SAME TIME, I'VE STILL

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12:46PM 1 GOT THIS IN THE BACK OF MY HEAD, AND I DON'T WANT TO PUT MY
12:46PM 2 PROBLEMS IN SOMEBODY ELSE'S POCKET.

12:47PM 3 Q. AND I APPRECIATE THAT. BUT YOU HEARD BOTH SIDES ALSO
12:47PM 4 SAY YOU MIGHT NOT BE A FAIR JUROR IN THIS PARTICULAR CASE.

12:47PM 5 A. AND THAT'S WHAT I'M FEELING RIGHT NOW.

12:47PM 6 MS. BATSON: TOTALLY UNDERSTANDABLE. THANK YOU,
12:47PM 7 SIR.

12:47PM 8 THE COURT: OKAY.

12:47PM 9 ANY QUESTIONS BY DEFENSE COUNSEL? ANYBODY?

12:47PM 10 MR. PETRAZIO: NONE, YOUR HONOR.

12:47PM 11 THE COURT: OKAY.

12:47PM 12 THANK YOU, JUROR NUMBER 15.

12:47PM 13 VENIREPERSON: THANK YOU.

12:47PM 14 THE COURT: ANYBODY WANT TO SAY ANYTHING ABOUT JUROR
12:47PM 15 NUMBER 15?

12:47PM 16 MS. BATSON: YES, YOUR HONOR. WE WOULD MOVE TO
12:47PM 17 STRIKE HIM FOR CAUSE.

12:47PM 18 THE COURT: OKAY. HE JUST SAID, AT THE END--IN
12:47PM 19 RESPONSE TO MS. BATSON'S STATEMENT, "YOU HEARD BOTH SIDES
12:47PM 20 SAY YOU MIGHT NOT BE A FAIR JUROR IN THIS PARTICULAR CASE"--

12:47PM 21 HIS RESPONSE WAS, "AND THAT'S WHAT I'M FEELING RIGHT
12:48PM 22 NOW."

12:48PM 23 I THINK HE JUST CONFIRMED THAT HE WOULD NOT BE A
12:48PM 24 FAIR JUROR IN THIS CASE.

12:48PM 25 MS. BATSON: YES, YOUR HONOR.

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12:48PM 1 THE COURT: ALL RIGHT.

12:48PM 2 ANYTHING DEFENSE COUNSEL WANTS TO SAY?

12:48PM 3 MR. PETRAZIO: NO, YOUR HONOR.

12:48PM 4 THE COURT: ALL RIGHT. I'LL GRANT THE GOVERNMENT'S
12:48PM 5 MOTION TO STRIKE JUROR NUMBER 15 FOR CAUSE.

12:48PM 6 THE NEXT JUROR WOULD BE NUMBER 17.

12:49PM 7 MS. BATSON: JUDGE, THIS WAS THE JUROR WHO WORKED
12:49PM 8 NIGHTS. WE WOULD NOT OPPOSE HIM BEING STRICKEN FOR CAUSE.

12:49PM 9 THE COURT: OKAY. I DIDN'T KNOW IF ANYBODY WANTED
12:49PM 10 TO ASK HIM ANY QUESTIONS.

12:49PM 11 ANYBODY HAVE ANY QUESTIONS FOR JUROR NUMBER 17?

12:49PM 12 MR. WHALEN: NO, YOUR HONOR.

12:49PM 13 MR. PETRAZIO: NO, YOUR HONOR.

12:49PM 14 MR. KEMP: NO, YOUR HONOR.

12:49PM 15 THE COURT: OKAY.

12:49PM 16 Q. YOU WORK AT NIGHT?

12:49PM 17 A. YES, SIR.

12:49PM 18 Q. AND YOU WORK UNTIL 11:30 OR 12, SOMETHING LIKE THAT?

12:49PM 19 A. YES, SIR.

12:49PM 20 Q. AND THEN YOU WOULD HAVE TO GET UP AND BE HERE AT 9:00?

12:49PM 21 A. IT DEPENDS. BECAUSE IT'S THE CHRISTMAS SEASON, WE GET
12:49PM 22 STUCK SOMETIMES UNTIL 2:00. I WORK IN A STEAKHOUSE, FINE-
12:49PM 23 DINING, SO WE HAVE TO STAY AS LONG AS THE GUESTS STAY.

12:49PM 24 THE COURT: OKAY. I DON'T THINK ANYBODY HAS ANY
12:49PM 25 QUESTIONS FOR YOU. THANK YOU, SIR.

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12:49PM 1 VENIREPERSON: THANK YOU.

12:49PM 2 THE COURT: OKAY.

12:49PM 3 SO WHAT DO YOU WANT TO DO WITH HIM? LET HIM GO? I
12:50PM 4 SAY WE LET HIM GO. IF HE HAS TO WORK UNTIL 2:00, THAT'S NOT
12:50PM 5 GOOD.

12:50PM 6 MR. WHALEN: I'D AGREE WITH THAT, YOUR HONOR.

12:50PM 7 MS. BATSON: THAT'S FINE.

12:50PM 8 THE COURT: ALL RIGHT. I'LL STRIKE JUROR NUMBER 17
12:50PM 9 FOR CAUSE, SINCE HE WORKS NIGHTS AND HE COULD BE WORKING LATE
12:50PM 10 NIGHTS.

12:50PM 11 THE NEXT PERSON I HAVE DOWN TO QUESTION IS NUMBER
12:50PM 12 19.

12:50PM 13 Q. JUROR NUMBER 19, YOU SAID THAT YOU HAD HAD SOME
12:50PM 14 DEALINGS WITH THE DEPARTMENT OF JUSTICE AS RECENT AS THIS YEAR.

12:50PM 15 A. THAT'S CORRECT.

12:50PM 16 Q. OKAY. I DIDN'T WANT TO GO ON AND QUESTION YOU FURTHER.
12:50PM 17 LET'S SEE. DID YOU SAY IT WAS IN CONNECTION WITH YOUR
12:51PM 18 EMPLOYMENT?

12:51PM 19 A. THAT'S CORRECT.

12:51PM 20 Q. OKAY.

12:51PM 21 A. YEAH. THE U.S. DEPARTMENT OF JUSTICE FILED SUIT
12:51PM 22 AGAINST THE COMPANY THAT I'M CHIEF FINANCIAL OFFICER FOR.
12:51PM 23 SO I WAS THE MAIN POINT--MAIN CONTACT POINT DURING THE
12:51PM 24 COURSE OF THAT INVESTIGATION AND LAWSUIT.

12:51PM 25 Q. OKAY. HAS THAT BEEN RESOLVED?

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12:51PM 1 A. IT WAS IN JUNE OF THIS YEAR.

12:51PM 2 Q. OKAY. WAS IT RESOLVED TO YOUR SATISFACTION?

12:51PM 3 A. UM, THAT'S KIND OF A LOADED QUESTION. I WOULD SAY YES.

12:51PM 4 I DON'T LIKE HOW IT GOT RESOLVED. IT WAS A 10-YEAR CASE. I

12:51PM 5 HAD SOME BITTERNESS TOWARD THE CIVIL RIGHTS DIVISION OF THE

12:51PM 6 DEPARTMENT OF JUSTICE. BUT ALL IN ALL WE'RE GLAD IT'S BEHIND

12:51PM 7 US.

12:51PM 8 Q. OKAY. SO YOU HAVE AN OPINION THAT PERHAPS IT WASN'T

12:51PM 9 HANDLED APPROPRIATELY BY THE DEPARTMENT OF JUSTICE?

12:51PM 10 A. I THINK IT WAS PRETTY CLEAR AT THE END OF THE DAY THAT

12:52PM 11 THEY WEREN'T GONNA WIN THE CASE, BUT THEY CONTINUED TO DRAG US

12:52PM 12 THROUGH THE MUD, AND IT COST US A LOT OF MONEY.

12:52PM 13 Q. OKAY. WOULD THAT AFFECT YOUR FEELINGS ABOUT THE

12:52PM 14 GOVERNMENT IN THIS CASE?

12:52PM 15 A. I'D LIKE TO SAY IT WOULDN'T.

12:52PM 16 Q. THE U.S. ATTORNEY'S OFFICE.

12:52PM 17 A. I'D LIKE TO SAY IT WOULDN'T. I DON'T THINK IT WOULD.

12:52PM 18 I'D LIKE TO BELIEVE THAT I WOULD BE UNBIASED. BUT IT WAS 10

12:52PM 19 YEARS OF BITTERNESS, JUST TO BE HONEST WITH YOU.

12:52PM 20 Q. OKAY. I GUESS THE QUESTION IS: COULD YOU SIT IN THE

12:52PM 21 JURY BOX, LISTEN TO THE EVIDENCE IN THIS CASE, DECIDE THE CASE

12:52PM 22 BASED ON THE EVIDENCE, GIVE THE GOVERNMENT A FAIR TRIAL THE

12:52PM 23 SAME AS YOU WOULD GIVE THE DEFENDANTS A FAIR TRIAL?

12:52PM 24 A. I FEEL THAT I COULD.

12:52PM 25 Q. OKAY. SINCE THIS IS A COMPLETELY DIFFERENT ISSUE FROM

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12:52PM 1 WHAT YOU WENT THROUGH WITH YOUR COMPANY.

12:52PM 2 A. YES, I FEEL THAT I COULD. I JUST WANTED TO BE HONEST
12:53PM 3 WITH YOU ABOUT MY EXPERIENCE.

12:53PM 4 THE COURT: THANK YOU.

12:53PM 5 MS. BATSON, DO YOU HAVE ANY QUESTIONS?

12:53PM 6 MS. BATSON: JUST A COUPLE, YOUR HONOR.

12:53PM 7 Q. SIR, YOU SAID THAT IT WAS 10 YEARS IN LENGTH. IT'S
12:53PM 8 TOTALLY UNDERSTANDABLE YOU FELT THEY KEPT DRAGGING IT ON AND
12:53PM 9 DRAGGING IT ON. AS YOU'VE HEARD BOTH SIDES SAY, SOMETIMES
12:53PM 10 YOU SHOULDN'T BE A JUROR IN A PARTICULAR CASE. BECAUSE OF
12:53PM 11 YOUR FEELINGS WITH THE DEPARTMENT OF JUSTICE, WHICH THE U.S.
12:53PM 12 ATTORNEY'S OFFICE IS A PART OF, DO YOU FEEL LIKE YOU WOULD
12:53PM 13 BE A BETTER JUROR ON ANOTHER CASE?

12:53PM 14 A. TO BE TOTALLY SAFE, I WOULD SAY YES. I'LL EXPAND
12:53PM 15 ON THAT A LITTLE BIT. AND THIS IS NOTHING AGAINST Y'ALL'S
12:53PM 16 DIVISION, OBVIOUSLY. BUT I FELT THINGS WEREN'T HANDLED VERY
12:53PM 17 WELL. I WOULD BE CONCERNED THAT I WOULD HAVE A BIAS. IF
12:53PM 18 THINGS IN Y'ALL'S PRESENTATION OF THE CASE STARTED GOING A
12:53PM 19 DIFFERENT WAY THAT I WOULD HAVE A BIAS IN TERMS OF HOW Y'ALL
12:53PM 20 ARE PROSECUTING THE CASE. I DON'T KNOW THAT FOR SURE, BUT...

12:54PM 21 Q. RIGHT. WHEN WE BEGIN THE TRIAL AND START--

12:54PM 22 A. YEAH.

12:54PM 23 MS. BATSON: THEN YOU MAY HAVE A BIAS?

12:54PM 24 THE COURT: MS. BATSON, I CAN BARELY HEAR YOU.

12:54PM 25 MS. BATSON: I'M SORRY, YOUR HONOR. I WAS SAYING

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12:54PM 1 THAT IF WE GOT INTO THE TRIAL AND OUR PRESENTATION STARTED
12:54PM 2 GOING SOUTH, HE MAY HAVE A BIAS. AND HE AGREED.

12:54PM 3 THE COURT: IF YOUR PRESENTATION GOES SOUTH, I DON'T
12:54PM 4 KNOW IF IT WOULD BE A BIAS, BUT...

12:54PM 5 VENIREPERSON: I'VE GOT SOME PREDISPOSED OPINIONS
12:54PM 6 OF THE DEPARTMENT OF JUSTICE BASED ON MY PERSONAL EXPERIENCE.
12:54PM 7 I DON'T THINK I WOULD BE BIASED IN THIS CASE. I'M JUST SAYING,
12:54PM 8 YOU KNOW, THAT THERE'S PROBABLY--

12:54PM 9 THE COURT:

12:54PM 10 Q. IT'S OKAY TO HAVE THOSE OPINIONS ABOUT DOJ. THIS IS,
12:54PM 11 OF COURSE, AN ARM OF DOJ, BUT EACH OF THE 94 DISTRICTS HAS ITS
12:54PM 12 OWN U.S. ATTORNEY. AND THE U.S. ATTORNEY FOR OUR DISTRICT RUNS
12:54PM 13 THE U.S. ATTORNEY'S OFFICES, INCLUDING PLANO. AND SO THIS IS
12:55PM 14 THE PROSECUTION OF A CRIMINAL CASE. YOUR INVESTIGATION, I
12:55PM 15 ASSUME, WAS SOME SORT OF CIVIL INVESTIGATION.

12:55PM 16 A. YES, SIR, CIVIL.

12:55PM 17 Q. ALL RIGHT. SO, REALLY, THE QUESTION IS: DO YOU HAVE
12:55PM 18 ANY HARD FEELINGS TOWARD DOJ OR THE GOVERNMENT IN GENERAL THAT
12:55PM 19 WOULD AFFECT YOUR ABILITY TO GIVE THE U.S. ATTORNEY'S OFFICE A
12:55PM 20 FAIR TRIAL IN THIS CASE?

12:55PM 21 A. NO.

12:55PM 22 THE COURT: OKAY.

12:55PM 23 QUESTIONS BY DEFENSE COUNSEL?

12:55PM 24 MR. WHALEN: NO, YOUR HONOR.

12:55PM 25 MR. PETRAZIO: NO, YOUR HONOR.

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12:55PM 1 MR. KEMP: NO, YOUR HONOR.

12:55PM 2 THE COURT: OKAY.

12:55PM 3 THANK YOU, SIR.

12:56PM 4 THE NEXT JUROR IS JUROR NUMBER 22.

12:56PM 5 Q. JUROR NUMBER 22, IF YOU WILL COME UP TO THE PODIUM
12:56PM 6 THERE. YOU RAISED YOUR HAND WHEN I ASKED THE QUESTION ABOUT
12:56PM 7 WHETHER ANYONE ON THE JURY PANEL HAD BEEN INVOLVED IN A
12:57PM 8 CRIMINAL MATTER IN COURT THAT CONCERNED YOU OR A FAMILY
12:57PM 9 MEMBER OR A CLOSE FRIEND AS A DEFENDANT, A WITNESS OR A VICTIM.

12:57PM 10 A. YES.

12:57PM 11 Q. OKAY. COULD YOU TELL ME ABOUT THAT.

12:57PM 12 A. WHEN I WAS 18, 19 YEARS OLD, I WAS A CASHIER IN A
12:57PM 13 CONVENIENCE STORE AND WE WERE HELD UP BY FOUR GUYS. SO I WAS
12:57PM 14 HELD AT GUNPOINT. AND I WENT TO COURT AS A WITNESS. I DON'T
12:57PM 15 THINK I WAS A VICTIM, BUT AS A WITNESS FOR THAT.

12:57PM 16 Q. OKAY. WELL, IF YOU WERE HELD AT GUNPOINT, YOU WERE
12:57PM 17 MORE OR LESS A VICTIM, TOO, I GUESS.

12:57PM 18 A. YEAH.

12:57PM 19 Q. OKAY. AND DID THEY CATCH THE PEOPLE THAT TRIED TO ROB
12:57PM 20 THE STORE?

12:57PM 21 A. THEY DID.

12:57PM 22 Q. OKAY. WERE THEY CONVICTED?

12:57PM 23 A. YES, THEY WERE.

12:57PM 24 Q. WAS THE CASE HANDLED TO YOUR SATISFACTION?

12:57PM 25 A. YES.

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12:57PM 1 Q. IS THERE ANYTHING ABOUT THAT EXPERIENCE THAT WOULD
12:57PM 2 AFFECT YOUR FEELINGS ABOUT BEING A JUROR IN THIS CASE?

12:57PM 3 A. I DON'T THINK SO.

12:58PM 4 THE COURT: OKAY.

12:58PM 5 MS. BATSON, ANY QUESTIONS?

12:58PM 6 MS. BATSON: NO, YOUR HONOR.

12:58PM 7 THE COURT: ANY QUESTIONS, MR. KEMP, MR. WHALEN,
12:58PM 8 MR. PETRAZIO?

12:58PM 9 MR. PETRAZIO: NOTHING, YOUR HONOR.

12:58PM 10 MR. KEMP: NO, YOUR HONOR.

12:58PM 11 MR. WHALEN: NO, YOUR HONOR.

12:58PM 12 THE COURT: THANK YOU, MA'AM.

12:58PM 13 Q. OH, WAIT A MINUTE, MA'AM. DID YOU SAY SOMETHING ABOUT
12:58PM 14 404(B) EVIDENCE--WELL, EXCUSE ME--ABOUT SIMILAR-ACT EVIDENCE
12:58PM 15 THAT MAY AFFECT YOU? IN OTHER WORDS, IF THERE'S EVIDENCE
12:58PM 16 ADMITTED THAT ONE OR MORE OF THE DEFENDANTS DID SOMETHING
12:58PM 17 SIMILAR TO WHAT HE'S ACCUSED OF IN THIS CASE--

12:58PM 18 A. OH, NO, I DID NOT.

12:58PM 19 Q. OKAY. AND YOU COULD FOLLOW MY INSTRUCTION THAT IF YOU
12:58PM 20 DO RECEIVE THAT TYPE OF EVIDENCE, YOU CAN ONLY CONSIDER IT FOR
12:58PM 21 LIMITED PURPOSES, SUCH AS STATE OF MIND OR WHETHER THE OFFENSE
12:58PM 22 THAT WE'RE GOING TO HAVE A TRIAL ON WAS DONE BY ACCIDENT OR
12:58PM 23 MISTAKE?

12:58PM 24 A. YES.

12:59PM 25 Q. OKAY.

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12:59PM 1 A. YEAH, I DID, YEAH.

12:59PM 2 THE COURT: OKAY. THANK YOU, MA'AM.

12:59PM 3 I HAD A NOTE ON NUMBER 24. DOES ANYBODY WANT TO
12:59PM 4 QUESTION 24?

12:59PM 5 MR. KEMP: YOUR HONOR, I THINK COUNSEL FOR THE
12:59PM 6 DEFENSE, ALL THREE OF US, HAD A QUESTION OF 23 ALSO.

12:59PM 7 THE COURT: 23?

12:59PM 8 MR. KEMP: THE QUESTION THAT YOU JUST ASKED 22
12:59PM 9 REGARDING THE 404(B) PRIOR CONVICTIONS.

12:59PM 10 THE COURT: OKAY.

12:59PM 11 NUMBER 23.

01:00PM 12 MR. KEMP, YOU MAY HAVE A BETTER RECOLLECTION THAN ME
01:00PM 13 AS TO WHAT HE SAID. SO I'LL JUST LET YOU ASK QUESTIONS. I'LL
01:00PM 14 START WITH YOU.

01:00PM 15 JUROR NUMBER 23, COULD YOU COME TO THE PODIUM HERE.
01:00PM 16 I THINK WE HAD A FEW QUESTIONS FOR YOU.

01:00PM 17 MR. KEMP, DO YOU HAVE QUESTIONS?

01:00PM 18 MR. KEMP: I DID, YOUR HONOR.

01:00PM 19 Q. YOU SAID THAT IF ONE OF THE DEFENDANTS HAD SOME PRIOR
01:00PM 20 CONVICTIONS, THAT THAT MAY BIAS YOUR ABILITY TO ASSUME THEM
01:00PM 21 INNOCENT THROUGHOUT THE CASE. IS THAT WHAT YOU SAID?

01:00PM 22 A. YES, IT WOULD MAKE IT A LITTLE BIT MORE DIFFICULT.
01:00PM 23 IT WOULD MAKE IT A LITTLE BIT MORE DIFFICULT.

01:00PM 24 Q. BY "MORE DIFFICULT," YOU MEAN YOU WOULDN'T BE ABLE
01:00PM 25 TO PRESUME THEM INNOCENT SIMPLY BECAUSE THEY HAD A PRIOR

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01:00PM 1 CONVICTION?

01:00PM 2 A. IT DEPENDS ON THE SIMILARITIES TO THE PRIOR CONVICTION
01:00PM 3 AND THIS CURRENT CONVICTION. BUT IF THEY'RE VERY SIMILAR,
01:00PM 4 IT WOULD BE DIFFICULT FOR ME TO RELINQUISH BIAS.

01:01PM 5 Q. A BANK-FRAUD CONVICTION, THAT'S NO PROBLEM?

01:01PM 6 A. YES. IF IT'S SOMETHING TOTALLY IRRELEVANT TO THE
01:01PM 7 CURRENT CHARGE, THAT PROBABLY WOULDN'T PLAY A FACTOR.

01:01PM 8 Q. IF THEY HAD A MARIJUANA CHARGE, THAT WOULD DEFINITELY
01:01PM 9 BIAS YOUR ABILITY TO PRESUME THEM INNOCENT?

01:01PM 10 A. NO, NO, NOT--PROBABLY NOT THAT PARTICULAR CASE, 'CAUSE,
01:01PM 11 YOU KNOW, KIND OF--YOU KNOW, DRUG POSSESSION IS KIND OF--IT'S
01:01PM 12 KIND OF PREVALENT, IT HAPPENS. SO I WOULDN'T REALLY CONSIDER
01:01PM 13 IT TO BE THE SAME AS, LIKE, MOVING METHAMPHETAMINE.

01:01PM 14 Q. POSSESSION WITH INTENT TO DISTRIBUTE IS DIFFERENT THAN
01:01PM 15 JUST SIMPLE POSSESSION?

01:01PM 16 A. I WOULD SAY THAT THERE'S A BIG GRAY AREA THERE. SO I
01:01PM 17 WOULDN'T PROBABLY TAKE THAT TOO MUCH INTO CONSIDERATION. IF IT
01:01PM 18 WAS, LIKE, THEY WERE CONVICTED ONCE OF MOVING METHAMPHETAMINES
01:01PM 19 AND THEY'RE DOING IT NOW, THAT WOULD BE A BIAS IN MY OPINION.
01:01PM 20 BUT I THINK POSSESSION OF, LIKE, MARIJUANA AND THIS PROBABLY
01:01PM 21 WOULDN'T PLAY TOO MUCH ON MY--BIAS ON MY PART.

01:02PM 22 Q. BOTTOM LINE, THOUGH, IF THERE'S A PRIOR CONVICTION
01:02PM 23 THAT'S SIMILARLY RELATED TO THIS CASE HERE, YOU WOULD HAVE
01:02PM 24 A BIAS IN PRESUMING THEM INNOCENT?

01:02PM 25 A. YES, SIR.

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01:02PM 1 MR. KEMP: THANK YOU.

01:02PM 2 THE COURT:

01:02PM 3 Q. JUROR NUMBER 23, IF THE COURT ADMITS EVIDENCE OF A
01:02PM 4 SIMILAR ACT, SUCH AS A PRIOR CONVICTION, I WOULD INSTRUCT YOU
01:02PM 5 THAT YOU CAN ONLY CONSIDER THAT FOR A LIMITED PURPOSE. AND I
01:02PM 6 WOULD INSTRUCT YOU THAT IF YOU FIND FROM OTHER EVIDENCE IN THE
01:02PM 7 CASE THAT THE DEFENDANT DID WHAT HE'S ACCUSED OF IN THIS CASE--
01:02PM 8 THAT IS, COMMITTED THE ACT OF FORMING AN AGREEMENT, FOR
01:02PM 9 EXAMPLE, TO POSSESS WITH INTENT TO DISTRIBUTE METHAMPHETAMINE--
01:02PM 10 THEN YOU CAN CONSIDER THE PRIOR SIMILAR ACT FOR THE PURPOSE OF
01:03PM 11 DETERMINING WHETHER OR NOT THERE WAS SOME SORT OF MISTAKE OR
01:03PM 12 ACCIDENT INVOLVED, OR WHETHER HE DIDN'T REALLY KNOWINGLY FORM
01:03PM 13 ANY AGREEMENT. SO THOSE ARE THE ONLY PURPOSES FOR WHICH YOU
01:03PM 14 CAN CONSIDER A PRIOR SIMILAR ACT.

01:03PM 15 A. YES, SIR.

01:03PM 16 Q. COULD YOU FOLLOW THAT INSTRUCTION FROM ME?

01:03PM 17 A. I DEFINITELY WOULD TRY MY BEST. I'M JUST ANSWERING THE
01:03PM 18 MOST HONESTLY I CAN THAT IF THE PRIOR SITUATION IS VERY, VERY
01:03PM 19 SIMILAR, IT WOULD BE DIFFICULT ON MY PART TO RELINQUISH BIAS.
01:03PM 20 BUT, I MEAN, I WOULD TRY MY BEST IN THAT SITUATION.

01:03PM 21 Q. AND BY "BIAS" YOU MEAN THAT IF YOU ARE TOLD THAT ONE
01:03PM 22 OR MORE OF THESE DEFENDANTS DID SOMETHING VERY SIMILAR TO WHAT
01:03PM 23 THEY'RE ON TRIAL FOR HERE, THAT YOU WOULD TEND TO BELIEVE THAT
01:04PM 24 IF THEY DID IT BEFORE, THEY PROBABLY DID IT NOW?

01:04PM 25 A. EXACTLY.

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01:04PM 1 THE COURT: ALL RIGHT.

01:04PM 2 ANY QUESTIONS, MS. BATSON?

01:04PM 3 MS. BATSON: NO, YOUR HONOR.

01:04PM 4 THE COURT: OKAY.

01:04PM 5 THANK YOU, SIR.

01:04PM 6 VENIREPERSON: THANK YOU.

01:04PM 7 THE COURT: MR. WHALEN?

01:04PM 8 MR. WHALEN: WE SUBMIT NUMBER 23 FOR CAUSE, YOUR
01:04PM 9 HONOR.

01:04PM 10 THE COURT: OKAY. I'M INCLINED TO STRIKE JUROR
01:04PM 11 NUMBER 23.

01:04PM 12 MS. BATSON: NO OBJECTION, YOUR HONOR.

01:04PM 13 THE COURT: OKAY. JUROR NUMBER 23 IS STRICKEN
01:04PM 14 FOR CAUSE. HE WOULD TEND TO CONSIDER 404(B) EVIDENCE FOR
01:04PM 15 ALL PURPOSES, AND IT WOULD BE CONSIDERED BY HIM AS EVIDENCE OF
01:04PM 16 GUILT BASED UPON THE REASONING THAT IF SOMEONE DID IT BEFORE,
01:04PM 17 THEY PROBABLY DID IT THIS TIME.

01:04PM 18 THE NEXT PERSON I HAVE DOWN TO QUESTION IS NUMBER
01:05PM 19 24.

01:05PM 20 Q. JUROR NUMBER 24, WOULD YOU GO TO THAT PODIUM RIGHT
01:05PM 21 THERE WHERE THERE'S A MICROPHONE. I JUST HAD A NOTE THAT IF
01:05PM 22 SOMEONE IS ACCUSED OF A CRIME AND THEY'RE ON TRIAL AND THEY
01:05PM 23 ELECT NOT TO TESTIFY, THAT YOU MIGHT CONSIDER THAT AS EVIDENCE
01:05PM 24 OF GUILT. YOU UNDERSTAND THAT I WILL INSTRUCT YOU THAT ANYONE
01:06PM 25 ACCUSED OF A CRIME HAS THE RIGHT NOT TO TESTIFY AND THAT THE

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01:06PM 1 LAW DOES NOT REQUIRE A DEFENDANT TO PROVE HIS INNOCENCE, HE
01:06PM 2 DOESN'T HAVE TO PRODUCE ANY EVIDENCE AT ALL, AND YOU CANNOT
01:06PM 3 INFER FROM HIS ELECTION NOT TO TESTIFY THAT HE'S GUILTY.

01:06PM 4 COULD YOU FOLLOW THAT INSTRUCTION FROM ME?

01:06PM 5 A. COULD I RESPOND TO THAT WITHOUT A "YES" OR "NO"?

01:06PM 6 Q. YES.

01:06PM 7 A. I BELIEVE I WAS ASKED CONCERNING THE PROPENSITY TO HAVE
01:06PM 8 A BIAS TOWARD SOMEONE NOT TESTIFYING. AND WHEN I RESPONDED, MY
01:06PM 9 RESPONSE WAS IN THE CONTEXT THAT THERE HAD BEEN MUCH DISCUSSION
01:06PM 10 ABOUT A CONSPIRACY AND THAT THERE HAD BEEN MUCH DISCUSSION
01:06PM 11 ABOUT PEOPLE INVOLVED IN THIS CONSPIRACY WHO WERE NOT
01:06PM 12 DEFENDANTS IN THE TRIAL THAT MAY BE OFFERING TESTIMONY. SO IN
01:06PM 13 THAT CONTEXT MY ANSWER WAS I FELT LIKE IF THERE WAS THAT MUCH
01:06PM 14 COMMINGLING OF ALL THESE DIFFERENT SCENARIOS AND THERE WERE
01:07PM 15 SOME PEOPLE WHO WERE TESTIFYING ABOUT IT AND SOME PEOPLE WHO
01:07PM 16 WERE NOT, I WOULD BE BIASED TO FEELING LIKE I WANTED TO--I'M
01:07PM 17 SORRY, NOT "FEELING"--I'D BE BIASED TO BE WANTING TO SEE THE
01:07PM 18 TESTIMONY OF ALL PARTIES INVOLVED.

01:07PM 19 SO, TO ANSWER YOU DIRECTLY, I WOULD TRY MY--I DON'T
01:07PM 20 BELIEVE I WAS SAYING I WOULD NOT FOLLOW YOUR INSTRUCTION OR
01:07PM 21 FOLLOW YOUR INSTRUCTION; I WAS SAYING I WOULD HAVE A PROPENSITY
01:07PM 22 TO FEEL LIKE I WOULD WANT TO SEE THOSE PEOPLE DISCUSS THAT THAT
01:07PM 23 WERE CHARGED WITH IT.

01:07PM 24 Q. INCLUDING--

01:07PM 25 A. YES, SIR.

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01:07PM 1 Q. --YOU SAID, THE PEOPLE WHO ARE ACCUSED OF THE CRIME,
01:07PM 2 WHO ARE ON TRIAL RIGHT HERE?

01:07PM 3 A. YES, SIR.

01:07PM 4 Q. OKAY. AND IF THEY ELECTED NOT TO TESTIFY, HOW WOULD
01:07PM 5 YOU DEAL WITH THAT?

01:07PM 6 A. I WOULD DEAL WITH IT THE BEST I COULD. IF I'VE BEEN
01:07PM 7 CHARGED TO DO THAT, I WOULD DO MY BEST TO SET THAT ASIDE.

01:07PM 8 Q. OKAY.

01:07PM 9 A. BUT I DON'T THINK THAT WAS THE QUESTION I WAS POSED
01:07PM 10 WHEN I WAS ASKED ABOUT IT.

01:07PM 11 Q. WELL, LET ME ASK YOU THE QUESTION NOW. IF THE
01:08PM 12 DEFENDANTS OR ONE OR MORE OF THEM ELECT NOT TO TESTIFY, CAN
01:08PM 13 YOU NOT CONSIDER THAT FOR ANY PURPOSE AND JUST FOCUS ON THE
01:08PM 14 EVIDENCE THAT THE GOVERNMENT OFFERS? BECAUSE THE GOVERNMENT
01:08PM 15 HAS THE BURDEN OF PROOF.

01:08PM 16 A. I DON'T KNOW HOW ELSE TO ANSWER YOU, JUDGE. I'M SORRY.
01:08PM 17 I WOULD DO MY BEST TO DO THAT. TO SAY AGAIN, WE WERE BEING
01:08PM 18 ASKED ABOUT WHAT OUR PREDISPOSITION IS TO CERTAIN THINGS,
01:08PM 19 AND THAT WOULD BE MY PREDISPOSITION, WHAT I STATED.

01:08PM 20 THE COURT: ALL RIGHT.

01:08PM 21 QUESTIONS BY MS. BATSON?

01:08PM 22 MS. BATSON: NO, YOUR HONOR.

01:08PM 23 THE COURT: QUESTIONS BY DEFENSE COUNSEL?

01:08PM 24 MR. WHALEN: NO, YOUR HONOR.

01:08PM 25 MR. PETRAZIO: BRIEFLY, YOUR HONOR.

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01:08PM 1 THE COURT: BRIEFLY?

01:08PM 2 MR. PETRAZIO:

01:08PM 3 Q. NOTHING WRONG WITH FEELING A CERTAIN WAY. I HOPE I
01:08PM 4 DIDN'T GIVE THAT IMPRESSION TO THE PANEL. THE ISSUE THAT WE'RE
01:08PM 5 HAVING, THOUGH, IS WHETHER OR NOT--I TALKED ABOUT INSUFFICIENCY
01:09PM 6 OF THE EVIDENCE, AND I TALKED ABOUT IF THE GOVERNMENT DOESN'T
01:09PM 7 GIVE YOU THAT LAST THING THAT YOU NEED, THAT LAST THING THAT
01:09PM 8 YOU NEED TO PUSH YOU OVER THE TOP TO CONVICT--I GUESS THE
01:09PM 9 REVERSE OF THAT IS, IF WE DON'T GIVE YOU ANYTHING, THAT ONE
01:09PM 10 THING THAT YOU MIGHT NEED TO SWAY YOU FOR "NOT GUILTY"--ARE
01:09PM 11 YOU GONNA HOLD THAT AGAINST SOMEBODY THAT DOESN'T TESTIFY?

01:09PM 12 A. I BELIEVE THAT'S A BROAD QUESTION, AND I'M ANSWERING
01:09PM 13 A SPECIFIC ISSUE.

01:09PM 14 Q. OKAY.

01:09PM 15 A. THE BROAD QUESTION IS: IF THEY DON'T DO THEIR JOB
01:09PM 16 IN PROVING OR I BELIEVE, ONCE I'VE HEARD ALL OF THAT, THAT
01:09PM 17 YOU HAVEN'T DONE YOUR JOB IN REFUTING--THAT'S A SEPARATE
01:09PM 18 ISSUE. BUT IT COULD BE COMMINGLED WITH THE FACT THAT IF IT
01:09PM 19 CAME DOWN TO THE ISSUE OF TESTIMONY ABOUT CONSPIRACY AND THOSE
01:09PM 20 CONSPIRATORS WERE TALKING ABOUT THIS PERSON DID THIS, THAT
01:09PM 21 PERSON DID THAT, THERE WERE SOME WHO TALKED, SOME WHO DIDN'T,
01:09PM 22 I WOULD BE PREDISPOSED TO WANTING TO HEAR FROM THE PEOPLE,
01:09PM 23 CONSIDERING THAT THERE WAS ALSO DISCUSSION, THERE WASN'T A
01:09PM 24 WRITTEN AGREEMENT, AND THERE WOULD BE A LACK OF, PROBABLY,
01:10PM 25 HARD EVIDENCE THAT WOULD SET THAT STRUCTURE IN PLACE.

INDIVIDUAL VOIR DIRE QUESTIONING

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01:10PM 1 Q. OKAY. NOTHING WRONG WITH WANTING TO HEAR. OKAY?

01:10PM 2 THAT'S NOT THE ISSUE. THE ISSUE IS: WOULD THAT WANTING--

01:10PM 3 WOULD THAT DESIRE TO HEAR FROM THE OTHER SIDE--WOULD YOU

01:10PM 4 HOLD THE FACT THAT YOU DIDN'T HEAR FROM THEM AGAINST THEM?

01:10PM 5 A. TO ANSWER HIS CHARGE, I WOULD DO MY BEST NOT TO.

01:10PM 6 Q. WHAT DOES THAT MEAN, YOUR "BEST"?

01:10PM 7 A. [PAUSING]

01:10PM 8 Q. YOU'RE THE ONLY ONE THAT KNOWS THAT. BECAUSE I CAN'T

01:10PM 9 READ YOUR MIND. DOES THAT MEAN WITH CERTAINTY YOU COULD FOLLOW

01:10PM 10 THE LAW AS HE GIVES IT TO YOU, OR YOU WOULD JUST TRY YOUR BEST,

01:10PM 11 BUT YOU CAN'T REALLY GUARANTEE US THAT YOU COULD DO IT? IS

01:10PM 12 YOUR BEST GONNA BE ENOUGH? THAT'S MY QUESTION.

01:10PM 13 A. I'VE BEEN EXPLICIT IN SAYING I GO INTO THIS WITH THE

01:10PM 14 BIAS THAT I WOULD WANT TO HEAR FROM THEM.

01:10PM 15 MR. PETRAZIO: OKAY.

01:10PM 16 NOTHING FURTHER, YOUR HONOR.

01:10PM 17 THE COURT: DID YOU HAVE A QUESTION?

01:10PM 18 MR. KEMP: BRIEFLY.

01:10PM 19 THE COURT: OKAY.

01:11PM 20 MR. KEMP:

01:11PM 21 Q. IN THE EVENT THAT THE GOVERNMENT DOESN'T SHOW YOU

01:11PM 22 ANY VIDEOS, THE ONLY THING THAT YOU HEAR ARE COCONSPIRATORS'

01:11PM 23 TESTIMONY SAYING A DEFENDANT DID THIS, A DEFENDANT DID THAT,

01:11PM 24 ARE YOU GOING TO HAVE A BIAS IF THAT'S ALL YOU HEAR, IS SIMPLY

01:11PM 25 COCONSPIRATOR TESTIMONY BUT THEN YOU DO NOT HEAR ANYTHING

INDIVIDUAL VOIR DIRE QUESTIONING

153

01:11PM 1 THAT REFUTES THAT FROM ANY ONE OF THE DEFENDANTS?

01:11PM 2 A. I THINK THAT'S A REPHRASING OF THE SAME ISSUE. I'M
01:11PM 3 SAYING THAT I GO INTO IT WITH A PREDISPOSITION BASED ON ALL OF
01:11PM 4 THE LIMITED THINGS THAT WE'VE TALKED ABOUT HERE THIS MORNING TO
01:11PM 5 SAY IF IT'S A CONSPIRACY AND IF THERE'S DISCUSSION AND IF THERE
01:11PM 6 ARE COCONSPIRATORS OR PEOPLE INVOLVED, POTENTIALLY, THAT ARE
01:11PM 7 NOT CHARGED OR ARE CHARGED, AND WE START HEARING TESTIMONY
01:11PM 8 TODAY, I WOULD BE PREDISPOSED IN WANTING TO HEAR FROM THE
01:11PM 9 PEOPLE THAT WERE CHARGED WITH IT.

01:11PM 10 MR. KEMP: OKAY. THANK YOU.

01:11PM 11 THE COURT: OKAY. THANK YOU, SIR.

01:12PM 12 ANY MOTION ON JUROR NUMBER 24?

01:12PM 13 MR. PETRAZIO: DEFENSE MOVES TO STRIKE FOR CAUSE.

01:12PM 14 THE COURT: OKAY.

01:12PM 15 ANYTHING YOU WANT TO SAY, MS. BATSON?

01:12PM 16 MS. BATSON: NO, YOUR HONOR.

01:12PM 17 THE COURT: OKAY. I'M GOING TO GRANT THE MOTION TO
01:12PM 18 STRIKE JUROR NUMBER 24 FOR CAUSE. HE IS NOT SURE IF HE COULD
01:12PM 19 FOLLOW THE INSTRUCTION THAT YOU CANNOT CONSIDER FOR ANY PURPOSE
01:12PM 20 THE ELECTION OF A DEFENDANT NOT TO TESTIFY.

01:12PM 21 MOVING ON, NUMBER 25.

01:13PM 22 Q. JUROR 25, WOULD YOU GO TO THE MICROPHONE AT THAT
01:13PM 23 PODIUM. YOU RAISED YOUR HAND WHEN I ASKED TWO QUESTIONS. THE
01:13PM 24 FIRST ONE WAS: HAS ANYONE BEEN INVOLVED IN A CRIMINAL MATTER
01:13PM 25 IN COURT THAT CONCERNED YOURSELF OR A FAMILY MEMBER OR A CLOSE

INDIVIDUAL VOIR DIRE QUESTIONING

154

01:13PM 1 FRIEND IN SOME WAY?

01:13PM 2 THE SECOND QUESTION WAS: HAVE YOU HAD AN EXPERIENCE
01:13PM 3 INVOLVING YOURSELF OR A FAMILY MEMBER OR CLOSE FRIEND THAT
01:13PM 4 RELATES SOMEHOW TO THE USE OR POSSESSION OF DRUGS?

01:13PM 5 A. CORRECT.

01:13PM 6 Q. BUT BEFORE I GET TO THAT, YOU ALSO SAID YOU HAVE A
01:13PM 7 DOCTOR'S APPOINTMENT. DO YOU HAVE A DOCTOR'S APPOINTMENT
01:13PM 8 THIS WEEK OR NEXT WEEK THAT YOU DO NOT WANT TO RESCHEDULE?

01:13PM 9 A. I HAVE A DERMATOLOGY APPOINTMENT AT 8:00 ON FRIDAY,
01:13PM 10 ORTHOPEDIC AT 1:30 ON FRIDAY AS WELL. I DON'T WANT TO MISS
01:13PM 11 THEM. I'M A BASEBALL SCOUT. I TRAVEL NINE MONTHS OUT OF
01:13PM 12 THE YEAR. I WANT TO BE AT THOSE APPOINTMENTS.

01:13PM 13 THE COURT: OKAY.

01:13PM 14 ANY QUESTIONS FOR JUROR NUMBER 25?

01:13PM 15 MS. BATSON: NO, YOUR HONOR.

01:14PM 16 MR. PETRAZIO: NONE, YOUR HONOR.

01:14PM 17 THE COURT: ALL RIGHT.

01:14PM 18 JUROR NUMBER 25, THANK YOU VERY MUCH.

01:14PM 19 Q. DO YOU TRAVEL ALL OVER LOOKING AT COLLEGES OR--

01:14PM 20 A. COLLEGES AND HIGH SCHOOL PLAYERS DURING THE SPRINGTIME.
01:14PM 21 DURING THE SUMMER, I DO PRO STUFF, MAJOR-LEAGUE STUFF.

01:14PM 22 Q. OKAY. AND YOU LIVE HERE, BUT YOU WORK FOR A BASEBALL--
01:14PM 23 PROFESSIONAL BASEBALL TEAM OUT OF STATE?

01:14PM 24 A. RIGHT.

01:14PM 25 Q. OKAY.

INDIVIDUAL VOIR DIRE QUESTIONING

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01:14PM 1 A. YEAH.

01:14PM 2 Q. THAT'S INTERESTING. OKAY. THANK YOU.

01:14PM 3 A. THANK YOU.

01:14PM 4 THE COURT: OKAY. HE HAS APPOINTMENTS DURING THE
01:14PM 5 TIME THAT WE WILL BE IN TRIAL, AND HE DOESN'T WANT TO CHANGE
01:14PM 6 THEM. I'M NOT GOING TO REQUIRE HIM TO. SO I'LL STRIKE JUROR
01:14PM 7 NUMBER 25 FOR CAUSE.

01:14PM 8 THE NEXT PERSON I HAVE A CHECKMARK BY IS JUROR
01:14PM 9 NUMBER 30, AND THEN 32.

01:15PM 10 Q. JUROR NUMBER 30, WOULD YOU GO TO THAT MICROPHONE RIGHT
01:15PM 11 THERE.

01:15PM 12 A. YES, SIR.

01:15PM 13 Q. YOU RAISED YOUR HAND WHEN I ASKED WHETHER ANYONE HAD
01:15PM 14 BEEN INVOLVED IN A CRIMINAL MATTER IN COURT THAT CONCERNED YOU
01:15PM 15 OR A FAMILY MEMBER OR A CLOSE FRIEND--

01:15PM 16 A. YES, SIR, I DID.

01:15PM 17 Q. --AS A DEFENDANT, A WITNESS OR A VICTIM.

01:15PM 18 A. YES, SIR, I DID.

01:15PM 19 Q. OKAY.

01:15PM 20 A. I WAS A DEFENDANT, ACTUALLY, IN TWO CASES IN TENNESSEE.
01:15PM 21 ONE OF THEM WAS RESISTING ARREST. THE VERDICT CAME OUT TO
01:16PM 22 BE "NOT GUILTY," ALL CHARGES WERE DROPPED DUE TO PSYCHIATRIC
01:16PM 23 REASONS.

01:16PM 24 AND THE SECOND ONE WAS VIOLATION OF, LIKE, A
01:16PM 25 DOMESTIC ORDER. AND I WAS FOUND GUILTY BECAUSE I DID MAKE

INDIVIDUAL VOIR DIRE QUESTIONING

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01:16PM 1 THE PHONE CALLS. I SERVED 70 DAYS IN THE DAVIDSON COUNTY
01:16PM 2 JAIL AND THEN WAS RELEASED AFTER THAT. AND IT WAS CONSIDERED
01:16PM 3 A MISDEMEANOR.

01:16PM 4 Q. OKAY. NOW, DO YOU FEEL THAT YOU WERE TREATED FAIRLY
01:16PM 5 OR UNFAIRLY BY LAW ENFORCEMENT AUTHORITIES IN THOSE TWO CASES?

01:16PM 6 A. I FEEL I WAS TREATED FAIRLY. I MEAN, BECAUSE ONE OF
01:16PM 7 THE REASONS WHY I WAS IN CHEATHAM COUNTY, WHICH IS WHERE THE
01:16PM 8 FIRST OFFENSE OCCURRED, THE FACT THAT THE OFFICERS DROPPED THE
01:16PM 9 CHARGES WAS, YOU KNOW, BECAUSE THEY REALIZED THIS WOMAN IS KIND
01:17PM 10 OF LOOPY HERE. SO I FELT LIKE THAT WAS TREATED FAIRLY.

01:17PM 11 THE ONES IN--AND THEN I DID MAKE A PHONE CALL TWICE
01:17PM 12 TO MY EX-HUSBAND. SO I WAS GUILTY, AND NOTHING WAS THERE,
01:17PM 13 ACTUALLY, BUT IT WAS REALLY NICE AS FAR AS WHERE I WAS
01:17PM 14 INCARCERATED AT. VERY, VERY NICE PEOPLE. SO YES, SIR,
01:17PM 15 IN ANSWER TO YOUR QUESTION.

01:17PM 16 Q. DID YOU SAY THIS WAS IN TENNESSEE?

01:17PM 17 A. YES, SIR, IT WAS. ONE WAS IN CHEATHAM COUNTY, WHICH
01:17PM 18 WOULD HAVE BEEN ASHLAND CITY; THE SECOND ONE WAS IN NASHVILLE,
01:17PM 19 ACTUALLY, NASHVILLE, TENNESSEE.

01:17PM 20 Q. OKAY. ALL RIGHT. ANYTHING ABOUT YOUR EXPERIENCE IN
01:17PM 21 THOSE TWO CASES THAT WOULD AFFECT YOUR ABILITY TO BE FAIR TO
01:17PM 22 BOTH THE GOVERNMENT AND THE DEFENDANTS IN THIS CASE AS A JUROR?

01:17PM 23 A. ACTUALLY, HAVING BEEN RAISED AS A POLICE OFFICER'S
01:17PM 24 DAUGHTER AND GETTING TO SEE BOTH SIDES OF IT WAS PRETTY--I
01:17PM 25 DON'T WANT TO SAY "INTERESTING." IT WAS JUST VERY SOBERING

INDIVIDUAL VOIR DIRE QUESTIONING

157

01:17PM 1 AS FAR AS WHAT GOES ON BEHIND THE SCENES AND EVERYTHING. SO
01:17PM 2 I DON'T THINK IT WOULD AFFECT MY JUDGMENT IN ANYTHING, NO, SIR.

01:18PM 3 Q. OKAY.

01:18PM 4 A. I WOULDN'T BE BIASED, IF THAT'S WHAT YOU'RE ASKING.

01:18PM 5 Q. YOU FEEL THAT YOU COULD BE FAIR TO THE GOVERNMENT IN
01:18PM 6 THIS CASE?

01:18PM 7 A. YES, SIR.

01:18PM 8 Q. IN THEY CONVINCE YOU BEYOND A REASONABLE DOUBT--

01:18PM 9 A. BEYOND A REASONABLE DOUBT, YES, SIR.

01:18PM 10 Q. --THAT THEY'VE PROVEN THE DEFENDANTS GUILTY, YOU COULD
01:18PM 11 FIND THE DEFENDANTS GUILTY?

01:18PM 12 A. YES, SIR, YES, SIR.

01:18PM 13 Q. AND IF YOU ARE NOT CONVINCED BEYOND A REASONABLE DOUBT,
01:18PM 14 YOU COULD FIND THEM NOT GUILTY?

01:18PM 15 A. YES, SIR, THAT'S CORRECT.

01:18PM 16 THE COURT: ALL RIGHT.

01:18PM 17 MS. BATSON, DO YOU HAVE ANY QUESTIONS?

01:18PM 18 MS. BATSON: NO, YOUR HONOR.

01:18PM 19 THE COURT: ANY QUESTIONS BY MR. WHALEN?

01:18PM 20 MR. WHALEN: NO, YOUR HONOR.

01:18PM 21 THE COURT: MR. KEMP?

01:18PM 22 MR. KEMP: NO, YOUR HONOR.

01:18PM 23 THE COURT: MR. PETRAZIO?

01:18PM 24 MR. PETRAZIO: NO, YOUR HONOR.

01:18PM 25 THE COURT: THANK YOU.

INDIVIDUAL VOIR DIRE QUESTIONING

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01:18PM 1 VENIREPERSON: THANK YOU, SIR.

01:18PM 2 THE COURT: OKAY. JUROR NUMBER 32.

01:19PM 3 Q. JUROR NUMBER 32, LET'S SEE. I BELIEVE YOU RAISED
01:19PM 4 YOUR HAND WHEN I ASKED THE QUESTION ABOUT WHETHER YOU HAD BEEN
01:19PM 5 INVOLVED IN A CRIMINAL MATTER THAT WENT TO COURT THAT CONCERNED
01:19PM 6 YOU OR A FAMILY MEMBER OR A CLOSE FRIEND IN SOME WAY.

01:19PM 7 A. THE ONLY THING I'VE BEEN INVOLVED IN--AND I WASN'T
01:19PM 8 SURE, SO I RAISED MY HAND TO BE CLEAR--I WAS INVOLVED IN A
01:19PM 9 DWI CONVICTION.

01:19PM 10 Q. OKAY.

01:19PM 11 A. THAT WAS THE ONE INCIDENT THAT I'VE BEEN INVOLVED IN.

01:19PM 12 Q. OKAY. YOU PERSONALLY?

01:19PM 13 A. YES.

01:19PM 14 Q. HOW LONG AGO WAS THAT?

01:19PM 15 A. FOUR OR FIVE YEARS AGO. IN DENTON COUNTY.

01:19PM 16 Q. ALL RIGHT. WHAT WAS THE OUTCOME OF THAT CASE?

01:19PM 17 A. I RECEIVED PROBATION FOR TWO YEARS.

01:19PM 18 Q. OKAY. HAVE YOU COMPLETED THAT?

01:19PM 19 A. YES, SIR.

01:19PM 20 Q. ALL RIGHT. DO YOU HAVE AN OPINION ABOUT WHETHER LAW
01:20PM 21 ENFORCEMENT OFFICERS AND THE DENTON COUNTY DA'S OFFICE TREATED
01:20PM 22 YOU FAIRLY OR UNFAIRLY?

01:20PM 23 A. I WAS TREATED FAIRLY. I MEAN, I HAD NO RESERVATIONS
01:20PM 24 ABOUT THE INCIDENT OR ANY OF THE PARTIES INVOLVED AT ALL.

01:20PM 25 Q. OKAY. DID YOU PLEAD GUILTY?

INDIVIDUAL VOIR DIRE QUESTIONING

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01:20PM

1

A. YES.

01:20PM

2

Q. OKAY. ALL RIGHT. DO YOU FEEL LIKE YOU COULD BE A FAIR JUROR TO THE GOVERNMENT IN THIS CASE?

01:20PM

3

01:20PM

4

A. YES, SIR.

01:20PM

5

Q. COULD YOU BE A FAIR JUROR TO THE THREE MEN WHO ARE ON TRIAL?

01:20PM

6

01:20PM

7

A. YES, SIR.

01:20PM

8

THE COURT: OKAY.

01:20PM

9

ANY QUESTIONS FOR THIS JUROR, MS. BATSON?

01:20PM

10

MS. BATSON: NO, YOUR HONOR.

01:20PM

11

THE COURT: ANY QUESTIONS FOR JUROR NUMBER 32 BY

01:20PM

12

DEFENSE COUNSEL?

01:20PM

13

MR. WHALEN: NO, YOUR HONOR.

01:20PM

14

MR. PETRAZIO: NO, YOUR HONOR.

01:20PM

15

MR. KEMP: NO, YOUR HONOR.

01:20PM

16

THE COURT: THANK YOU, MA'AM.

01:20PM

17

VENIREPERSON: THANK YOU.

01:20PM

18

THE COURT: OKAY.

01:20PM

19

JUROR NUMBER 33. AND THEN 34.

01:21PM

20

JUROR NUMBER 33, IF YOU WILL JUST COME RIGHT THERE

01:21PM

21

TO THAT MICROPHONE.

01:21PM

22

Q. YOU RAISED YOUR HAND WHEN I ASKED THE QUESTION ABOUT

01:21PM

23

WHETHER ANYONE HAD AN EXPERIENCE INVOLVING YOURSELF OR A FAMILY

01:21PM

24

MEMBER OR A CLOSE FRIEND THAT SOMEHOW RELATES TO THE USE OR

01:21PM

25

POSSESSION OF DRUGS.

INDIVIDUAL VOIR DIRE QUESTIONING

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01:21PM 1 A. CORRECT.

01:21PM 2 Q. OKAY. YOU ALSO INDICATED THAT YOU MIGHT NEED TO TAKE
01:21PM 3 MORE FREQUENT BREAKS THAN, SAY, EVERY TWO HOURS.

01:21PM 4 A. WELL, I HAVE A BACK PROBLEM AND I HAVE SOME ARTHRITIS
01:21PM 5 IN MY HIP. SO IF I SIT FOR VERY LONG ON A HARD SURFACE, IT
01:22PM 6 KIND OF GETS UNCOMFORTABLE.

01:22PM 7 Q. OKAY. NOW, I KNOW YOU WERE SITTING ON A HARD SURFACE
01:22PM 8 BACK OVER THERE. IF YOU WERE CHOSEN AS A JUROR, YOU WOULD BE
01:22PM 9 SITTING IN THESE PADDED CHAIRS HERE.

01:22PM 10 A. I JUST HAVE A PROBLEM SITTING THAT LONG. IT JUST CAN
01:22PM 11 GET UNCOMFORTABLE AFTER A WHILE IS ALL.

01:22PM 12 Q. OKAY. WELL, CAN YOU SIT IN A CHAIR THAT HAS PADDING--

01:22PM 13 A. YES.

01:22PM 14 Q. --FOR, SAY, TWO HOURS?

01:22PM 15 A. YES.

01:22PM 16 Q. ALL RIGHT.

01:22PM 17 TELL ME ABOUT YOUR EXPERIENCE OR THAT OF A FAMILY
01:22PM 18 MEMBER OR A CLOSE FRIEND, WHOEVER IT WAS, WITH DRUGS.

01:22PM 19 A. WELL, I KNOW FIRSTHAND HOW DRUGS--DEVASTATING THEY CAN
01:22PM 20 BE TO INDIVIDUALS AND TO FAMILIES. MY DAUGHTER HAPPENED TO GET
01:22PM 21 HOOKED ON DRUGS AT 17, AND WE, YOU KNOW, WENT THROUGH A LOT
01:22PM 22 OF PROBLEMS. BUT, THANK GOODNESS, TODAY SHE'S LIVING A GREAT
01:22PM 23 LIFE. BUT I KNOW HOW HARD IT CAN BE. SO IT'S KIND OF A TOUCHY
01:23PM 24 SUBJECT.

01:23PM 25 Q. OKAY. HOW LONG AGO WAS THAT WITH YOUR DAUGHTER?

INDIVIDUAL VOIR DIRE QUESTIONING

161

01:23PM 1 A. WELL, GOSH, SHE'S 34. 17 YEARS. IT'S BEEN A LONG TIME
01:23PM 2 AGO.

01:23PM 3 Q. OKAY. CAN YOU TELL ME WHAT TYPE OF DRUG IT WAS?

01:23PM 4 A. COCAINE.

01:23PM 5 Q. COCAINE. WOULD THAT AFFECT YOUR ABILITY TO USE YOUR
01:23PM 6 GOOD JUDGMENT AND TO CALMLY CONSIDER THE EVIDENCE IN THIS CASE
01:23PM 7 AND TO BE OBJECTIVE IN THIS CASE?

01:23PM 8 A. I DON'T THINK SO.

01:23PM 9 Q. OKAY. DID YOUR DAUGHTER EVER HAVE A CASE? DID THE
01:23PM 10 POLICE GET INVOLVED?

01:23PM 11 A. NO, LUCKILY NOT. WE GOT INVOLVED BEFORE THAT COULD
01:23PM 12 HAPPEN.

01:23PM 13 Q. OKAY.

01:23PM 14 DO YOU FEEL LIKE YOU WOULD BE A FAIR JUROR FOR THE
01:23PM 15 GOVERNMENT?

01:23PM 16 A. YES.

01:23PM 17 Q. IF THE GOVERNMENT CONVINCED YOU BEYOND A REASONABLE
01:23PM 18 DOUBT OF THE CHARGES THAT HAVE BEEN BROUGHT AGAINST THE
01:24PM 19 DEFENDANTS, COULD YOU FIND THEM GUILTY?

01:24PM 20 A. YES.

01:24PM 21 Q. COULD YOU USE YOUR OWN GOOD JUDGMENT AND COMMON SENSE
01:24PM 22 AND, IF THE GOVERNMENT DID NOT CONVINCE YOU BEYOND A REASONABLE
01:24PM 23 DOUBT, COULD YOU FIND THE DEFENDANTS NOT GUILTY?

01:24PM 24 A. YES, I BELIEVE SO.

01:24PM 25 THE COURT: OKAY.

INDIVIDUAL VOIR DIRE QUESTIONING

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01:24PM 1 MS. BATSON, ANY QUESTIONS?

01:24PM 2 MS. BATSON: NO, YOUR HONOR.

01:24PM 3 THE COURT: MR. KEMP?

01:24PM 4 MR. KEMP: NO, YOUR HONOR.

01:24PM 5 THE COURT: MR. WHALEN?

01:24PM 6 MR. WHALEN: JUST BRIEFLY, YOUR HONOR.

01:24PM 7 THE COURT: OKAY.

01:24PM 8 MR. WHALEN:

01:24PM 9 Q. OBVIOUSLY, I KNOW IT'S BEEN 17 YEARS, BUT IT STILL
01:24PM 10 EVOKES SOME EMOTION IN YOU. OBVIOUSLY, OUR CONCERN IS IF YOU
01:24PM 11 ARE SELECTED AS A JUROR AND WE GET INVOLVED IN THIS TRIAL, IT
01:24PM 12 COULD START BRINGING UP STUFF FOR YOU AS FAR AS DRUGS AND THE
01:24PM 13 TOPIC ITSELF. AND SO THAT'S OUR CONCERN, IS THAT IF YOU GET
01:25PM 14 OVER THERE AND IT STARTS COMING UP, IT'S TOO LATE.

01:25PM 15 I KNOW YOU'VE USED THE WORDS "I THINK SO" AND "I
01:25PM 16 FEEL I CAN." WHAT WE REALLY NEED IS A GUARANTEE FROM YOU THAT
01:25PM 17 IF YOU ARE SELECTED AS A JUROR, YOU'LL BE ABLE TO SET THOSE
01:25PM 18 EXPERIENCES ASIDE AND JUDGE THE CASE ON MERITS ALONE AND NOT
01:25PM 19 LET THAT AFFECT YOU. CAN YOU GUARANTEE US THAT YOU CAN DO
01:25PM 20 THAT?

01:25PM 21 A. YES. YES, I THINK I CAN. I'M SURE I CAN.

01:25PM 22 MR. WHALEN: OKAY.

01:25PM 23 THAT'S ALL I HAD.

01:25PM 24 THE COURT:

01:25PM 25 Q. I JUST HAD A NOTE, JUROR NUMBER 33, REGARDING

INDIVIDUAL VOIR DIRE QUESTIONING

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01:25PM 1 SIMILAR-ACT EVIDENCE. DID YOU UNDERSTAND MY EXPLANATION TO
01:25PM 2 THE JURY THAT YOU CAN CONSIDER PRIOR SIMILAR OFFENSES THAT
01:25PM 3 ARE OFFERED INTO EVIDENCE ONLY FOR THE PURPOSE OF DETERMINING
01:25PM 4 WHETHER OR NOT THE DEFENDANT HAD THE STATE OF MIND THAT
01:25PM 5 THE GOVERNMENT MUST PROVE, WHICH IS COMMITTING THE ACT
01:25PM 6 INTENTIONALLY AND KNOWINGLY, AND FOR OTHER PURPOSES, SUCH AS
01:26PM 7 WHETHER OR NOT THE DEFENDANT COMMITTED THE ACT THAT HE'S ON
01:26PM 8 TRIAL FOR BY MISTAKE OR ACCIDENT? DO YOU UNDERSTAND THOSE ARE
01:26PM 9 THE ONLY TYPES OF CONSIDERATIONS YOU CAN GIVE TO SIMILAR-ACT
01:26PM 10 EVIDENCE?

01:26PM 11 A. OKAY. YES, I DID UNDERSTAND.

01:26PM 12 Q. AND BY "SIMILAR ACT," I MEAN PRIOR CONVICTIONS FOR
01:26PM 13 SOMETHING SIMILAR.

01:26PM 14 A. CORRECT.

01:26PM 15 Q. AND THAT YOU CANNOT CONSIDER THE FACT THAT A PERSON WAS
01:26PM 16 CONVICTED BEFORE OF A SIMILAR CRIME AND DETERMINE THAT IF THE
01:26PM 17 PERSON DID IT BEFORE, THEY PROBABLY DID IT NOW, AND I'M GONNA
01:26PM 18 FIND THEM GUILTY.

01:26PM 19 A. NO. NO, I DON'T BELIEVE THAT.

01:26PM 20 THE COURT: OKAY. ALL RIGHT. THANK YOU, MA'AM.

01:26PM 21 VENIREPERSON: UH-HUH.

01:26PM 22 THE COURT: I NEED JUROR NUMBER 34 AND THEN 35.

01:27PM 23 JUROR NUMBER 34, IF YOU WILL GO TO THE PODIUM.

01:27PM 24 Q. I THINK YOU RAISED YOUR NUMBER WHEN I STARTED TALKING
01:27PM 25 ABOUT TAKING A BREAK EVERY TWO HOURS.

INDIVIDUAL VOIR DIRE QUESTIONING

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01:27PM 1 A. YEAH. I HAVE BACK SPASMS WHEN I SIT TOO LONG. IT
01:27PM 2 MAKES IT VERY, VERY PAINFUL.

01:27PM 3 Q. OKAY. YOU'VE BEEN SITTING ON A WOODEN BENCH THERE.
01:27PM 4 IF YOU ARE CHOSEN AS A JUROR, YOU WOULD BE SITTING ON PADDED
01:27PM 5 SEATING.

01:27PM 6 A. I CAN, BUT, LIKE, TONIGHT, I'M NOT GONNA BE ABLE TO
01:27PM 7 SLEEP BECAUSE I'M IN HORRIBLE PAIN.

01:27PM 8 Q. OH, NO. OKAY.

01:27PM 9 A. SO...

01:27PM 10 Q. OKAY. IS IT YOUR LOWER BACK?

01:28PM 11 A. YEAH.

01:28PM 12 Q. OKAY. SO IF YOU WERE CHOSEN ON THE JURY AND YOU HAD TO
01:28PM 13 SIT THERE FOR AN HOUR AND A HALF OR TWO HOURS, YOU COULD DO IT,
01:28PM 14 BUT YOU WOULDN'T BE ABLE TO SLEEP THAT NIGHT?

01:28PM 15 A. EXACTLY.

01:28PM 16 THE COURT: OKAY.

01:28PM 17 ANY QUESTIONS FOR JUROR NUMBER 34?

01:28PM 18 MS. BATSON: NO, YOUR HONOR.

01:28PM 19 MR. KEMP: NO, YOUR HONOR.

01:28PM 20 MR. PETRAZIO: NO, YOUR HONOR.

01:28PM 21 THE COURT: OKAY.

01:28PM 22 MR. WHALEN: JUST BRIEFLY.

01:28PM 23 THE COURT: OH, YOU DO?

01:28PM 24 MR. WHALEN:

01:28PM 25 Q. AND, OBVIOUSLY, IF YOU ARE IN PAIN, IT'S GOING TO BE

INDIVIDUAL VOIR DIRE QUESTIONING

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01:28PM 1 DIFFICULT FOR YOU TO CONCENTRATE?

01:28PM 2 A. EXACTLY. THAT WAS MY CONCERN.

01:28PM 3 MR. WHALEN: THANK YOU.

01:28PM 4 THE COURT: OKAY. THANK YOU, MA'AM.

01:28PM 5 VENIREPERSON: OKAY.

01:28PM 6 THE COURT: OKAY. I'M INCLINED TO STRIKE JUROR

01:28PM 7 NUMBER 34 FOR CAUSE BECAUSE SHE WOULD NOT BE ABLE TO SLEEP

01:28PM 8 AT NIGHT IF SHE HAS TO SIT HERE.

01:28PM 9 MR. PETRAZIO: NO OBJECTION, YOUR HONOR.

01:28PM 10 THE COURT: OKAY. HEARING NO OBJECTION FROM COUNSEL,

01:28PM 11 I'LL STRIKE JUROR NUMBER 34 FOR CAUSE.

01:28PM 12 Q. NUMBER 35, IF YOU WOULD JUST STOP RIGHT THERE AT THAT

01:29PM 13 PODIUM--

01:29PM 14 A. OKAY.

01:29PM 15 Q. --AND HANG ON JUST FOR A SECOND.

01:29PM 16 A. OKAY.

01:29PM 17 Q. OKAY. JUROR NUMBER 35, I BELIEVE YOU RAISED YOUR

01:29PM 18 HAND WHEN I ASKED THE QUESTION ABOUT WHETHER YOU HAD HAD ANY

01:29PM 19 EXPERIENCE INVOLVING YOURSELF OR A FAMILY MEMBER OR A CLOSE

01:29PM 20 FRIEND THAT RELATES SOMEHOW TO THE USE OR POSSESSION OF DRUGS.

01:29PM 21 A. CORRECT. I JUST HAD MY BEST FRIEND FROM COLLEGE, HER

01:29PM 22 SON HAS BEEN INVOLVED WITH HEROIN AND THEN ALSO A COCAINE

01:29PM 23 POSSESSION CHARGE.

01:29PM 24 Q. OKAY. THIS IS YOUR BEST FRIEND WHOSE SON HAS BEEN

01:29PM 25 INVOLVED IN DRUGS?

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01:29PM 1 A. YES.

01:29PM 2 Q. OKAY. IS THAT RECENTLY?

01:29PM 3 A. LAST YEAR.

01:29PM 4 Q. ALL RIGHT. DO YOU KNOW ENOUGH ABOUT HIS--WAS HE
01:30PM 5 ARRESTED OR ANYTHING?

01:30PM 6 A. WELL, YES. AND HE HAD TO, YOU KNOW, DO COMMUNITY
01:30PM 7 SERVICE. IT WAS IN NORTH CAROLINA WHERE HE WAS GOING TO
01:30PM 8 SCHOOL. SO HE'S JUST COMPLETED ALL THAT. SO THEY HAD TO
01:30PM 9 GO THROUGH THE WHOLE PROCESS, THE LEGAL PROCESS FOR THAT.

01:30PM 10 Q. OKAY. DO YOU KNOW ENOUGH ABOUT HIS CASE TO HAVE AN
01:30PM 11 OPINION AS TO WHETHER OR NOT HE WAS TREATED FAIRLY OR UNFAIRLY
01:30PM 12 BY LAW ENFORCEMENT AUTHORITIES?

01:30PM 13 A. NO. AND IT WOULDN'T REALLY COLOR ANYTHING THAT I WOULD
01:30PM 14 DECIDE HERE.

01:30PM 15 Q. OKAY. THAT'S WHAT I WAS GETTING TO. SO WAS THERE
01:30PM 16 ANYTHING ABOUT HIS CASE THAT WOULD AFFECT--

01:30PM 17 A. NO, ABSOLUTELY NOT.

01:30PM 18 Q. YOU FEEL THAT YOU COULD BE A FAIR JUROR TO THE
01:30PM 19 GOVERNMENT IN THIS CASE?

01:30PM 20 A. YES.

01:30PM 21 Q. AND TO THE DEFENDANTS?

01:30PM 22 A. YES.

01:30PM 23 THE COURT: ANY QUESTIONS FOR JUROR NUMBER 34 [SIC]?

01:30PM 24 MS. BATSON: NO, YOUR HONOR.

01:30PM 25 MR. KEMP: NO, YOUR HONOR.

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01:30PM 1 MR. PETRAZIO: NO, YOUR HONOR.

01:30PM 2 MR. WHALEN: NO, YOUR HONOR.

01:30PM 3 THE COURT: OKAY. THANK YOU, MA'AM.

01:30PM 4 VENIREPERSON: THERE WAS ONE OTHER THING THAT YOU
01:30PM 5 MENTIONED. YOU KNOW, I WOULDN'T THINK THAT THIS WOULD BE A
01:31PM 6 REASON WHY I COULDN'T STAY, BUT YOU HAD MENTIONED WAS THERE ANY
01:31PM 7 REASON WHY YOU COULDN'T SIT FOR THIS LONG OF A PERIOD OF TIME.
01:31PM 8 THAT'S REALLY MY MAIN REASON OF COMING IN, IS THAT, FIRST OF
01:31PM 9 ALL, I DID SOMETHING TO MY BACK YESTERDAY, SO I'VE BEEN VERY,
01:31PM 10 VERY UNCOMFORTABLE SITTING HERE, AND THINKING IF I GET CHOSEN,
01:31PM 11 I DON'T KNOW HOW I'M GONNA BE ABLE TO SIT FOR THAT LONG OF A
01:31PM 12 PERIOD.

01:31PM 13 AND THEN ALSO I REALLY HAVE A HARD TIME FOCUSING AND
01:31PM 14 CONCENTRATING. I'VE BEEN UNDER A CHEMOTHERAPY DRUG FOR THE
01:31PM 15 LAST FEW YEARS. AND I REALLY THINK--HONESTLY, I HATE TO SAY
01:31PM 16 THIS, BUT, I MEAN, I CAN'T HARDLY EVEN WATCH A HALF-HOUR TV
01:31PM 17 SHOW. I CAN WATCH SPORTS, BUT I HAVE A HARD TIME REALLY
01:31PM 18 FOCUSING ON ANYTHING LIKE THAT. SO I'M JUST AFRAID THAT, YOU
01:31PM 19 KNOW, I WOULDN'T BE ABLE TO REALLY GET EVERYTHING. I MEAN,
01:31PM 20 MAYBE, BUT I JUST KNOW HOW MY --

01:31PM 21 THE COURT:

01:31PM 22 Q. THANK YOU FOR TELLING ME. I KNOW I HAVE READ THAT
01:32PM 23 CHEMOTHERAPY CAN DO THAT.

01:32PM 24 A. YES. I DON'T KNOW IF THAT'S IT OR I'M JUST MENOPAUSAL,
01:32PM 25 BUT THAT'S MY EXCUSE. I DON'T KNOW. I JUST REALLY HAVE

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01:32PM 1 NOTICED THAT IN THE LAST FEW YEARS. SO...

01:32PM 2 THE COURT: OKAY. THANK YOU.

01:32PM 3 ANY FOLLOW-UP QUESTIONS BASED ON WHAT JUROR NUMBER
01:32PM 4 35 JUST SAID?

01:32PM 5 MR. KEMP: NO, YOUR HONOR.

01:32PM 6 MR. WHALEN: NO, YOUR HONOR.

01:32PM 7 THE COURT: ALL RIGHT.

01:32PM 8 THANK YOU, MA'AM.

01:32PM 9 VENIREPERSON: THANK YOU.

01:32PM 10 MR. KEMP: I WANTED TO SEE IF WE WOULD BE ABLE TO
01:32PM 11 BRING IN JUROR NUMBER 36.

01:32PM 12 THE COURT: OKAY. BUT, NOW, ON 35, I'M INCLINED TO
01:32PM 13 STRIKE HER FOR CAUSE. IF SHE CAN'T FOCUS AND CONCENTRATE FOR
01:32PM 14 A VERY LONG PERIOD OF TIME, THAT WOULD BE A PROBLEM. ANY
01:32PM 15 OBJECTION TO STRIKING HER FOR CAUSE?

01:32PM 16 MR. WHALEN: NO OBJECTION.

01:32PM 17 MR. PETRAZIO: NO OBJECTION, YOUR HONOR.

01:32PM 18 MS. BATSON: NO OBJECTION.

01:32PM 19 MR. KEMP: NO OBJECTION.

01:32PM 20 THE COURT: ALL RIGHT. I'LL STRIKE JUROR NUMBER 35
01:33PM 21 FOR CAUSE.

01:33PM 22 MR. KEMP WANTS TO QUESTION NUMBER 36. IS THAT
01:33PM 23 RIGHT?

01:33PM 24 MR. KEMP: THAT'S CORRECT, YOUR HONOR.

01:33PM 25 THE COURT: OKAY.

INDIVIDUAL VOIR DIRE QUESTIONING

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01:33PM 1 JUROR NUMBER 36.

01:33PM 2 NUMBER 36, WOULD YOU COME TO THE MICROPHONE THERE AT
01:33PM 3 THE PODIUM. I THINK DEFENSE COUNSEL HAD A QUESTION FOR YOU.

01:33PM 4 VENIREPERSON: SURE.

01:33PM 5 MR. KEMP:

01:34PM 6 Q. YOU WORKED AT TEXAS ACTIVITY CENTER FOR T.I.?

01:34PM 7 A. YES.

01:34PM 8 Q. WHEN WERE YOU EMPLOYED THERE?

01:34PM 9 A. AROUND 2000.

01:34PM 10 Q. WHEN DID YOU CEASE BEING EMPLOYED THERE?

01:34PM 11 A. THAT WOULD HAVE BEEN JANUARY 2002.

01:34PM 12 Q. OKAY. DO YOU REMEMBER ME?

01:34PM 13 A. NO.

01:34PM 14 MR. KEMP: OKAY.

01:34PM 15 FOR THE PURPOSES OF THE RECORD, I WORKED IN THE SAME
01:34PM 16 GYM THAT HE WORKED AT, BUT THAT WAS AT A POINT IN TIME WHEN I
01:34PM 17 WAS LEAVING AND HE WAS COMING IN. I DON'T RECALL WORKING
01:34PM 18 DIRECTLY FOR HIM OR WITH HIM AS AN EMPLOYEE, BUT I DID WANT TO
01:34PM 19 PUT THAT ON THE RECORD, THAT I DID RECOGNIZE HIM AND HIS NAME.

01:34PM 20 THE COURT: OKAY. AND THAT WAS AT A GYM FOR TEXAS
01:34PM 21 INSTRUMENTS, DID YOU SAY?

01:34PM 22 MR. KEMP: THAT'S CORRECT.

01:34PM 23 THE COURT: WHERE WAS THAT?

01:34PM 24 MR. KEMP: 635 AND 75, AT THE MAIN CAMPUS.

01:34PM 25 VENIREPERSON: I WAS AT THE PLANO LOCATION.

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01:35PM 1 THE COURT: OKAY.

01:35PM 2 WELL, DOES ANYBODY HAVE ANY QUESTIONS FOR JUROR
01:35PM 3 NUMBER 36?

01:35PM 4 MS. BATSON: NO, YOUR HONOR.

01:35PM 5 THE COURT: MAYBE YOU WERE AT DIFFERENT LOCATIONS OR
01:35PM 6 JUST SAW EACH OTHER OR--

01:35PM 7 MR. KEMP: WE WERE. I MOVED BACK AND FORTH BETWEEN--
01:35PM 8 I MOVED UP TO THE SPRING CREEK LOCATION WHERE HE WAS AT IN
01:35PM 9 PLANO HERE AND THERE, BUT IT WASN'T REGULAR. BUT OUT OF AN
01:35PM 10 ABUNDANCE OF CAUTION, I THOUGHT I SHOULD ASK HIM.

01:35PM 11 THE COURT: OKAY.

01:35PM 12 Q. JUROR NUMBER 36, IS THERE ANYTHING ABOUT YOU NOW
01:35PM 13 LEARNING ABOUT MR. KEMP APPARENTLY WORKED AT THE SAME PLACE
01:35PM 14 THAT WOULD AFFECT YOUR FEELINGS ABOUT THIS CASE?

01:35PM 15 A. NO.

01:35PM 16 THE COURT: OKAY. THANK YOU.

01:35PM 17 VENIREPERSON: THANK YOU.

01:35PM 18 THE COURT: ANYBODY WANT TO SAY ANYTHING ABOUT JUROR
01:35PM 19 NUMBER 36?

01:35PM 20 MS. BATSON: NO, YOUR HONOR.

01:35PM 21 THE COURT: OKAY.

01:35PM 22 THE NEXT PERSON THAT I HAVE A NOTE TO TALK TO IS
01:35PM 23 NUMBER 38. AND THEN 41.

01:36PM 24 Q. JUROR NUMBER 38, YOU MUST HAVE TOLD ONE OF THE COURT
01:36PM 25 OFFICERS THAT YOU WANTED TO VISIT WITH ME.

INDIVIDUAL VOIR DIRE QUESTIONING

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01:36PM 1 A. YES, SIR.

01:36PM 2 Q. OKAY.

01:36PM 3 A. I THINK OVER THE TIME I WAS THINKING OUT THERE, BEING
01:36PM 4 38, I WASN'T SURE IF I'D EVEN BE RELEVANT TO THIS DISCUSSION,
01:36PM 5 BUT SO MANY PEOPLE WERE COMING IN, I GOT TO THINKING I PROBABLY
01:36PM 6 OUGHT TO COME IN HERE. AS A TEACHER AND COACH FOR OVER 30
01:36PM 7 YEARS, I'VE HAD LOTS OF KIDS WHO WENT DOWN WHAT I CONSIDERED
01:36PM 8 THE WRONG PATH, GOT INVOLVED IN DRUGS AND THINGS LIKE THAT.
01:36PM 9 AND THAT HAS TAINTED MY VIEWPOINT ON THIS TYPE OF A PROCEEDING.

01:37PM 10 ONE OF THE DEFENSE ATTORNEYS ALSO--I DON'T KNOW
01:37PM 11 IF HE WAS TRYING TO PLAY FOR SYMPATHY OR SOMETHING, BUT HE
01:37PM 12 MISQUOTED THE CONSTITUTION AND CONFUSED IT WITH THE BILL
01:37PM 13 OF--EXCUSE ME, WITH THE DECLARATION OF INDEPENDENCE A WHILE
01:37PM 14 AGO, WITH THE "LIFE, LIBERTY AND PURSUIT OF HAPPINESS" THING.
01:37PM 15 THAT'S NOT IN THE FIFTH AMENDMENT, THAT'S NOT IN THE
01:37PM 16 CONSTITUTION.

01:37PM 17 ONE OF THE GENTLEMEN OVER HERE ALSO HAS DONE
01:37PM 18 EVERYTHING EXCEPT JUMP UP ON THE BANDSTAND AND SAY THAT
01:37PM 19 THE CLIENTS HAVE PRIOR CONVICTIONS THAT WE SHOULDN'T BE
01:37PM 20 CONSIDERING. AND THAT JUST--I DON'T KNOW. I THINK THAT
01:37PM 21 MIGHT HAVE TAINTED ME AS WELL.

01:37PM 22 Q. WELL, HERE'S THE THING. PRIOR CONVICTIONS ARE
01:37PM 23 ADMISSIBLE FOR LIMITED PURPOSES UNDER--

01:37PM 24 A. I UNDERSTAND THAT, YES, SIR.

01:37PM 25 Q. --CERTAIN CIRCUMSTANCES. YOU CAN CONSIDER A PRIOR

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01:38PM 1 SIMILAR ACT IN DETERMINING WHETHER OR NOT YOU THINK A PERSON
01:38PM 2 INTENTIONALLY AND KNOWINGLY DID WHAT HE'S ON TRIAL FOR HERE--

01:38PM 3 A. YES, I UNDERSTAND THE DIFFERENCE.

01:38PM 4 Q. --OR WHETHER IT WAS AN ACCIDENT OR MISTAKE. BUT I
01:38PM 5 WOULD GIVE YOU LIMITING INSTRUCTIONS ON THAT.

01:38PM 6 A. ALL RIGHT.

01:38PM 7 Q. OKAY?

01:38PM 8 SO DO YOU FEEL THAT YOU SHOULD NOT SERVE AS A JUROR
01:38PM 9 IN THIS CASE? IS THAT WHAT YOU ARE SAYING?

01:38PM 10 A. I JUST THOUGHT I MIGHT BE A LITTLE PREJUDICED BASED ON
01:38PM 11 ALL THOSE FACTORS I LISTED FOR YOU.

01:38PM 12 Q. OKAY.

01:38PM 13 A. AGAINST THE DEFENSE.

01:38PM 14 THE COURT: OKAY. ALL RIGHT.

01:38PM 15 MS. BATSON, ANY QUESTIONS FOR JUROR NUMBER 38?

01:38PM 16 MS. BATSON: NO, YOUR HONOR.

01:38PM 17 THE COURT: ANY OTHER QUESTIONS FOR JUROR NUMBER 38?

01:38PM 18 OKAY.

01:38PM 19 MR. KEMP: NO, YOUR HONOR.

01:38PM 20 MR. WHALEN: NO, YOUR HONOR.

01:38PM 21 MR. PETRAZIO: NO, YOUR HONOR.

01:38PM 22 THE COURT: THANK YOU, SIR.

01:38PM 23 VENIREPERSON: THANK YOU.

01:38PM 24 THE COURT: I'M GETTING THE FEELING THAT JUROR
01:38PM 25 NUMBER 38 SHOULD BE STRICKEN FOR CAUSE.

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01:38PM 1 MR. WHALEN: NO OBJECTION, YOUR HONOR.

01:38PM 2 THE COURT: HE APPEARS TO--I DON'T KNOW. HE MAY
01:39PM 3 HAVE SOME BIAS AGAINST COUNSEL.

01:39PM 4 [LAUGHTER]

01:39PM 5 MS. BATSON: WE LIKE HIM, YOUR HONOR. NO, ACTUALLY,
01:39PM 6 WE HAVE NO OBJECTION.

01:39PM 7 THE COURT: ALL RIGHT. LET ME COME BACK TO THAT.

01:39PM 8 JUROR NUMBER 41 IS NOW IN THE COURTROOM.

01:39PM 9 Q. NUMBER 41, WOULD YOU COME UP TO THE MICROPHONE, PLEASE.
01:39PM 10 I BELIEVE YOU RAISED YOUR--YEAH, YOU RESPONDED TO MY QUESTION
01:39PM 11 ABOUT A DOCTOR'S APPOINTMENT THAT YOU WOULD PREFER NOT TO
01:39PM 12 CHANGE THAT YOU HAVE THIS WEEK OR NEXT WEEK.

01:39PM 13 A. YES, SIR.

01:39PM 14 Q. DO YOU HAVE A DOCTOR'S APPOINTMENT THIS WEEK OR NEXT
01:39PM 15 WEEK?

01:39PM 16 A. YES, SIR, NEXT WEEK.

01:39PM 17 Q. NEXT WEEK? OKAY. DO YOU KNOW WHAT DAY IT'S ON NEXT
01:39PM 18 WEEK?

01:39PM 19 A. IT'S NOT FIXED YET, BUT I NEED TO HAVE A FOLLOW-UP
01:39PM 20 APPOINTMENT.

01:39PM 21 Q. OKAY.

01:39PM 22 A. LAST WEEK I HAD APPOINTMENT [SIC]. DOCTOR SAID, "I
01:39PM 23 NEED TO MEET AFTER ONE WEEK [SIC]."

01:39PM 24 Q. OKAY. AND YOU WOULD PREFER NOT TO PUT THAT OFF?

01:40PM 25 A. YES, SIR.

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01:40PM 1 THE COURT: OKAY.

01:40PM 2 ANY QUESTIONS FOR JUROR NUMBER 41?

01:40PM 3 MS. BATSON: NO, YOUR HONOR.

01:40PM 4 MR. WHALEN: NO, YOUR HONOR.

01:40PM 5 MR. KEMP: NO, YOUR HONOR.

01:40PM 6 MR. PETRAZIO: NO, YOUR HONOR.

01:40PM 7 THE COURT: OKAY.

01:40PM 8 THANK YOU, SIR.

01:40PM 9 VENIREPERSON: THANK YOU.

01:40PM 10 THE COURT: OKAY. I'LL STRIKE JUROR NUMBER 41--

01:40PM 11 UNLESS THERE'S AN OBJECTION, I'LL STRIKE JUROR NUMBER 41 FOR
01:40PM 12 CAUSE SINCE HE NEEDS TO GO TO THE DOCTOR NEXT WEEK, WHEN WE
01:40PM 13 WILL MOST LIKELY, BASED UPON THE ESTIMATE OF TIME HERE, BE IN
01:40PM 14 TRIAL.

01:40PM 15 RETURNING TO JUROR NUMBER 38, HE SEEMS TO HAVE SOME
01:40PM 16 SORT OF PROBLEM WITH DEFENSE COUNSEL. SO I AM GOING TO STRIKE
01:40PM 17 HIM FOR CAUSE UNLESS SOMEBODY WANTS TO BE HEARD. ALL RIGHT.
01:40PM 18 HEARING NOTHING--

01:40PM 19 MR. PETRAZIO: NO OBJECTION.

01:40PM 20 THE COURT: --I'M STRIKING NUMBER 38 FOR CAUSE.

01:41PM 21 WE'RE DOWN TO 41. I'VE STRICKEN FOR CAUSE JURORS
01:41PM 22 NUMBERED 4, 11, 15, 17, 23, 24, 25, 34, 35, 38 AND 41. THAT'S
01:41PM 23 11. WE'RE DOWN THROUGH 41. I DIDN'T HAVE ANY QUESTIONS FOR
01:41PM 24 42. SO WE'VE GOT 31. LET'S SEE. I THINK WE JUST BARELY HAVE
01:41PM 25 ENOUGH IF WE STOP NOW, EXCEPT THAT ONE OF THE DEFENSE LAWYERS

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01:41PM 1 ASKED ME ABOUT EXTRA STRIKES.

01:41PM 2 WAS IT YOU, MR. WHALEN?

01:41PM 3 MR. WHALEN: YES, YOUR HONOR.

01:41PM 4 THE COURT: DO YOU STILL WANT TO DISCUSS THAT?

01:42PM 5 MR. WHALEN: IF YOU WILL GIVE THEM TO US, WE WILL
01:42PM 6 TAKE THEM.

01:42PM 7 THE COURT: OKAY. WELL, WHAT I'LL NEED TO DO, OF
01:42PM 8 COURSE, IS BALANCE THE STRIKES BETWEEN THE DEFENSE AND THE
01:42PM 9 GOVERNMENT. THERE'S NOT BUT A FEW MORE LEFT, SO WE COULD GO
01:42PM 10 THROUGH THE REST OF THE JURORS AND SEE HOW MANY WE HAVE LEFT.

01:42PM 11 THE NEXT PERSON THAT I NEED TO TALK TO IS NUMBER 43
01:42PM 12 AND THEN NUMBER 46.

01:43PM 13 Q. JUROR NUMBER 43, YOU RAISED YOUR HAND WHEN I ASKED
01:43PM 14 THE QUESTION ABOUT WHETHER ANYONE ON THE JURY PANEL HAD AN
01:43PM 15 EXPERIENCE INVOLVING YOURSELF OR A FRIEND OR A FAMILY MEMBER
01:43PM 16 THAT RELATES SOMEHOW TO THE USE OR POSSESSION OF DRUGS.

01:43PM 17 A. YES. MY SISTER AWHILE AGO WAS INVOLVED WITH
01:43PM 18 METHAMPHETAMINES, AND HER BOYFRIEND WAS HER DISTRIBUTOR,
01:43PM 19 AND OTHERS.

01:43PM 20 Q. OKAY. DID YOUR SISTER EVER HAVE ANY PROBLEMS WITH THE
01:43PM 21 POLICE OR LAW ENFORCEMENT?

01:43PM 22 A. SHE DID NOT, BUT HE DID.

01:43PM 23 Q. OKAY.

01:43PM 24 A. SHE WASN'T WITH HIM, LIKE, IN THE SAME AREA, WHEN HE
01:44PM 25 GOT ARRESTED.

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01:44PM 1 Q. OKAY. HOW LONG AGO DID THIS OCCUR?

01:44PM 2 A. IT WAS ABOUT FOUR YEARS AGO, I BELIEVE.

01:44PM 3 Q. OKAY. DO YOU KNOW HIM VERY WELL?

01:44PM 4 A. I DID AT THE TIME. I WAS NOT AWARE OF ALL OF WHAT WAS
01:44PM 5 GOING ON, BUT...

01:44PM 6 Q. DID YOU FOLLOW HIS CASE?

01:44PM 7 A. NOT--NOT A WHOLE LOT. MY FAMILY STEPPED AWAY FROM
01:44PM 8 THAT BECAUSE SHE WASN'T PERSONALLY INVOLVED IN TOO MUCH OF IT.

01:44PM 9 Q. OKAY.

01:44PM 10 A. SO THERE WAS A DISTINCT SEPARATION.

01:44PM 11 Q. OKAY. HAS YOUR SISTER RESOLVED HER PROBLEM WITH
01:44PM 12 METHAMPHETAMINE?

01:44PM 13 A. YES. EVENTUALLY SHE DID, YES.

01:44PM 14 Q. ALL RIGHT. DO YOU HAVE ANY OPINION ABOUT HER EX--OR,
01:44PM 15 I DON'T KNOW, HER BOYFRIEND'S CASE, AS TO WHETHER OR NOT HE WAS
01:45PM 16 TREATED FAIRLY OR UNFAIRLY BY LAW ENFORCEMENT?

01:45PM 17 A. AS FAR AS I COULD TELL, HE WAS TREATED VERY FAIRLY.
01:45PM 18 HE WAS CONVICTED, BUT IT WAS ALL PRETTY FAIR AND BASIC, LIKE.

01:45PM 19 Q. WAS HE CONVICTED IN STATE COURT OR FEDERAL COURT? OR
01:45PM 20 DO YOU KNOW?

01:45PM 21 A. I DON'T REMEMBER.

01:45PM 22 Q. ALL RIGHT. IS THERE ANYTHING ABOUT YOUR SISTER'S
01:45PM 23 EXPERIENCE AND WHAT YOU KNEW ABOUT IT AND HER BOYFRIEND THAT
01:45PM 24 WOULD AFFECT YOUR FEELINGS ABOUT BEING A JUROR IN THIS CASE?

01:45PM 25 A. I WOULD LIKE TO SAY NO. I KNOW SOMETIMES IT HITS A

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01:45PM 1 LITTLE CLOSE TO HOME. BUT I'M GOOD AT SEPARATING THINGS.

01:45PM 2 BUT NOT ALWAYS.

01:45PM 3 Q. OKAY.

01:45PM 4 A. I WANT TO SAY NO, BUT I CAN'T GUARANTEE THERE'S NOT
01:45PM 5 GOING TO BE SOMETHING THAT COMES UP THAT ISN'T GOING TO AFFECT
01:46PM 6 ME.

01:46PM 7 Q. OKAY. IF IT AFFECTS YOU, THAT'S ONE THING. IF IT
01:46PM 8 SIMPLY REMINDS YOU OF YOUR SISTER AND HER SITUATION--

01:46PM 9 A. IT JUST MIGHT BE HARD FOR ME TO REMAIN IMPARTIAL AND
01:46PM 10 UNBIASED.

01:46PM 11 Q. OKAY. WITH RESPECT TO THE GOVERNMENT OR THE DEFENDANTS?

01:46PM 12 A. UM, WITH RESPECT TO THE DEFENDANTS.

01:46PM 13 THE COURT: OKAY.

01:46PM 14 ANY QUESTIONS FOR JUROR NUMBER 43, MS. BATSON?

01:46PM 15 MS. BATSON: COUPLE, YOUR HONOR.

01:46PM 16 Q. THIS CONVICTION OF THE BOYFRIEND, WAS THAT IN DENTON
01:46PM 17 COUNTY?

01:46PM 18 A. IT WAS--YES, 'CAUSE THEY WERE IN--IT WAS IN THE DFW
01:46PM 19 AREA. I DON'T REMEMBER WHICH COUNTY.

01:46PM 20 Q. WHAT'S HIS NAME?

01:46PM 21 A. KOBE STREAK [PHONETICALLY].

01:46PM 22 Q. KOBE STREAK?

01:46PM 23 A. YES.

01:46PM 24 MS. BATSON: THAT'S ALL I HAVE.

01:46PM 25 THE COURT: ANY QUESTIONS?

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01:46PM 1 MR. WHALEN: NO QUESTIONS, YOUR HONOR.

01:46PM 2 MR. PETRAZIO: NO QUESTIONS.

01:46PM 3 MR. KEMP: NO QUESTIONS.

01:47PM 4 THE COURT: OKAY.

01:47PM 5 Q. SO YOU ARE SAYING THAT WHAT YOU KNEW ABOUT YOUR
01:47PM 6 SISTER'S EXPERIENCE WITH DRUGS AND HER BOYFRIEND MAY AFFECT
01:47PM 7 YOUR ABILITY TO BE FAIR TO THE DEFENDANTS IN THIS CASE?

01:47PM 8 A. YES, SIR.

01:47PM 9 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

01:47PM 10 ANY MOTION?

01:47PM 11 MR. WHALEN: I WOULD MOVE TO STRIKE HER FOR CAUSE,
01:47PM 12 YOUR HONOR.

01:47PM 13 THE COURT: WHAT SAYS THE GOVERNMENT?

01:47PM 14 MS. BATSON: NO OBJECTION, YOUR HONOR.

01:47PM 15 THE COURT: ALL RIGHT. HEARING NO OBJECTION, I'M
01:47PM 16 GOING TO STRIKE JUROR NUMBER 43 FOR CAUSE BASED UPON HER
01:47PM 17 RESPONSE TO MY QUESTION.

01:47PM 18 OKAY. NUMBER 46. AND THEN 47.

01:47PM 19 JUROR NUMBER 46, WOULD YOU COME TO THE PODIUM RIGHT
01:48PM 20 THERE.

01:48PM 21 Q. I THINK YOU RAISED YOUR HAND WHEN I ASKED WHETHER OR
01:48PM 22 NOT ANYBODY HAD A DOCTOR'S APPOINTMENT EITHER THIS WEEK OR NEXT
01:48PM 23 WEEK.

01:48PM 24 A. YEAH. I'VE GOT ONE TOMORROW.

01:48PM 25 Q. TOMORROW?

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01:48PM 1 A. UH-HUH.

01:48PM 2 Q. CAN YOU TELL ME WHAT TIME IT IS TOMORROW?

01:48PM 3 A. UM, 10:00.

01:48PM 4 Q. ALL RIGHT. LET'S SEE. AND YOU DON'T WANT TO
01:48PM 5 RESCHEDULE THAT?

01:48PM 6 A. I'VE PUT IT OFF ALREADY AND I'M OVERDUE, YEAH.

01:48PM 7 THE COURT: OKAY. ALL RIGHT.

01:48PM 8 ANY QUESTIONS FOR JUROR NUMBER 46?

01:48PM 9 MS. BATSON: NO, YOUR HONOR.

01:48PM 10 MR. KEMP: NO, YOUR HONOR.

01:48PM 11 MR. PETRAZIO: NO, YOUR HONOR.

01:48PM 12 THE COURT: NO QUESTIONS? OKAY.

01:48PM 13 THANK YOU, JUROR NUMBER 46.

01:48PM 14 I'M GOING TO STRIKE JUROR NUMBER 46 FOR CAUSE UNLESS
01:49PM 15 SOMEONE WANTS TO BE HEARD. HE HAS A DOCTOR'S APPOINTMENT
01:49PM 16 TOMORROW, WHEN WE'LL BE IN TRIAL.

01:49PM 17 Q. JUROR NUMBER 47, I HAVE A NOTE THAT YOU RAISED YOUR
01:49PM 18 HAND WHEN I ASKED THE QUESTION ABOUT WHETHER YOU HAD ANY
01:49PM 19 EXPERIENCE INVOLVING YOURSELF OR A FAMILY MEMBER OR A CLOSE
01:49PM 20 FRIEND THAT SOMEHOW RELATES TO THE USE OR POSSESSION OF DRUGS.

01:49PM 21 A. YES, SIR.

01:49PM 22 Q. COULD YOU TELL ME ABOUT THAT.

01:49PM 23 A. UM, WELL, I GUESS I'VE JUST KNOWN MULTIPLE DIFFERENT
01:49PM 24 CIRCUMSTANCES WHERE PEOPLE HAVE DEALT WITH DRUGS. I GUESS
01:49PM 25 MAYBE NOT ANY IN PARTICULAR, BUT JUST I'VE KNOWN ABOUT IT.

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01:49PM 1 Q. ALL RIGHT. ALL TYPES OF DRUGS?

01:50PM 2 A. NEVER ANYTHING LIKE THIS, BUT DIFFERENT DRUGS, YES.

01:50PM 3 Q. OKAY. BUT NOT METHAMPHETAMINE?

01:50PM 4 A. NO, SIR.

01:50PM 5 Q. OKAY. LET'S SEE. DO YOU KNOW ANY PEOPLE WHO HAVE BEEN
01:50PM 6 ARRESTED FOR A DRUG CRIME?

01:50PM 7 A. UM, YES. PARAPHERNALIA. I GUESS THEY HAD
01:50PM 8 PARAPHERNALIA.

01:50PM 9 Q. PARAPHERNALIA? OKAY. DO YOU HAVE AN OPINION ABOUT--
01:50PM 10 AND WERE THEY FRIENDS OF YOURS?

01:50PM 11 A. YES.

01:50PM 12 Q. DO YOU HAVE AN OPINION ABOUT WHETHER THEY WERE TREATED
01:50PM 13 FAIRLY OR UNFAIRLY BY THE POLICE?

01:50PM 14 A. I DO NOT HAVE AN OPINION.

01:50PM 15 Q. DO NOT. OKAY. IS THERE ANYTHING ABOUT THE FACT THAT
01:50PM 16 YOU KNOW SOME PEOPLE WHO HAVE BEEN INVOLVED IN POSSESSING OR
01:50PM 17 USING OR DISTRIBUTING DRUGS--IS THERE ANYTHING ABOUT THAT
01:50PM 18 THAT WOULD AFFECT YOUR ABILITY TO BE A JUROR IN THIS CASE?

01:51PM 19 A. NO, SIR.

01:51PM 20 Q. COULD YOU FOCUS ON THE EVIDENCE IN THIS CASE AND DECIDE
01:51PM 21 THIS CASE BASED ON THE EVIDENCE?

01:51PM 22 A. I BELIEVE SO.

01:51PM 23 Q. COULD YOU BE A FAIR JUROR FOR THE GOVERNMENT?

01:51PM 24 A. YES.

01:51PM 25 Q. IF THE GOVERNMENT CONVINCED YOU BEYOND A REASONABLE

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01:51PM 1 DOUBT IN YOUR MIND THAT THEY HAD PROVEN THE CHARGES THAT HAVE
01:51PM 2 BEEN BROUGHT AGAINST THESE DEFENDANTS, COULD YOU RETURN A
01:51PM 3 VERDICT OF "GUILTY"?

01:51PM 4 A. YES.

01:51PM 5 Q. AND IF YOU WERE NOT CONVINCED BEYOND A REASONABLE DOUBT
01:51PM 6 THAT THE GOVERNMENT HAD PROVED ITS CASE, COULD YOU RETURN A
01:51PM 7 VERDICT OF "NOT GUILTY"?

01:51PM 8 A. YES, SIR.

01:51PM 9 THE COURT: OKAY.

01:51PM 10 MS. BATSON, DO YOU HAVE ANY QUESTIONS FOR JUROR
01:51PM 11 NUMBER 47?

01:51PM 12 MS. BATSON: NO, YOUR HONOR.

01:51PM 13 THE COURT: ANY QUESTIONS, MR. KEMP?

01:51PM 14 MR. KEMP: NO, YOUR HONOR.

01:51PM 15 THE COURT: MR. WHALEN?

01:51PM 16 MR. WHALEN: NO, YOUR HONOR.

01:51PM 17 THE COURT: MR. PETRAZIO?

01:51PM 18 MR. PETRAZIO: NO, YOUR HONOR.

01:51PM 19 THE COURT: ALL RIGHT.

01:51PM 20 THANK YOU.

01:51PM 21 VENIREPERSON: THANK YOU.

01:52PM 22 THE COURT: FINALLY, JUROR NUMBER 48.

01:52PM 23 JUROR NUMBER 48, IF YOU COULD JUST GO TO THE
01:52PM 24 MICROPHONE.

01:52PM 25 Q. YOU RAISED YOUR HAND WHEN I ASKED WHETHER YOU HAD

INDIVIDUAL VOIR DIRE QUESTIONING

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01:52PM 1 BEEN INVOLVED IN--WHETHER YOU HAD ANY INVOLVEMENT IN A CRIMINAL
01:52PM 2 MATTER THAT WENT TO COURT THAT CONCERNED EITHER YOU OR A FAMILY
01:52PM 3 MEMBER OR A CLOSE FRIEND AS A DEFENDANT, A WITNESS OR A VICTIM.
01:53PM 4 COULD YOU TELL ME ABOUT THAT.

01:53PM 5 A. IT'S IN THE MIDDLE OF IT. WE WERE HIT BY A MAN UNDER
01:53PM 6 THE INFLUENCE, AND IT'S STILL PENDING UP IN COLLIN COUNTY.
01:53PM 7 IT'S BEEN POSTPONED FOUR OR FIVE TIMES. I WAS THE ONE THAT
01:53PM 8 WAS HIT.

01:53PM 9 Q. OKAY. WAS ANYONE ELSE IN THE CAR WITH YOU?

01:53PM 10 A. YES; MY WIFE, MY TWO GRANDKIDS AND MY DAUGHTER.

01:53PM 11 Q. WAS ANYONE INJURED?

01:53PM 12 A. ONE OF MY GRANDKIDS AND MY DAUGHTER.

01:53PM 13 Q. ALL RIGHT. HAS THE PERSON WHO--SO A PERSON HAS BEEN
01:53PM 14 ARRESTED ON THAT?

01:53PM 15 A. YES, SIR.

01:53PM 16 Q. AND THEIR CASE IS PENDING. IS IT GOING TO BE A TRIAL?
01:53PM 17 OR DO YOU KNOW?

01:53PM 18 A. WE DON'T KNOW ANYTHING.

01:53PM 19 Q. OKAY. ALL RIGHT.

01:53PM 20 DO YOU HAVE AN OPINION ABOUT WHETHER THE POLICE AND
01:53PM 21 THE COLLIN COUNTY DISTRICT ATTORNEY'S OFFICE HAVE HANDLED THE
01:53PM 22 CASE APPROPRIATELY?

01:53PM 23 A. NO OPINION. IT SEEMS LIKE IT IS. ACTUALLY, I DON'T
01:54PM 24 KNOW WHY THEY'RE CALLING ME. I NEVER SAW THE MAN. HE HIT US
01:54PM 25 AND TOOK OFF, AND THEY'RE WANTING TO USE MY TESTIMONY. ALL

INDIVIDUAL VOIR DIRE QUESTIONING

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01:54PM 1 I CAN SAY IS I SAW A TRUCK HIT ME.

01:54PM 2 Q. OKAY.

01:54PM 3 A. SO...

01:54PM 4 Q. ALL RIGHT. ANYTHING ABOUT YOUR EXPERIENCE AS THE
01:54PM 5 VICTIM OF A CRIME--IF IT WAS A CRIME, IF HE WAS INTOXICATED,
01:54PM 6 ANYTHING ABOUT YOUR EXPERIENCE THERE THAT WOULD AFFECT YOUR
01:54PM 7 FEELINGS ABOUT BEING A JUROR IN THIS CASE?

01:54PM 8 A. NO, SIR.

01:54PM 9 Q. DO YOU BELIEVE THAT YOU COULD BE A FAIR JUROR TO BOTH
01:54PM 10 THE GOVERNMENT AND TO THE ACCUSED?

01:54PM 11 A. YES, SIR.

01:54PM 12 THE COURT: OKAY.

01:54PM 13 ANY QUESTIONS FOR JUROR NUMBER 48, MS. BATSON?

01:54PM 14 MS. BATSON: NO, YOUR HONOR.

01:54PM 15 THE COURT: MR. KEMP?

01:54PM 16 MR. KEMP: JUST ONE, YOUR HONOR.

01:54PM 17 THE COURT: ALL RIGHT.

01:54PM 18 MR. KEMP:

01:54PM 19 Q. DO YOU HAPPEN TO KNOW WHAT HE WAS UNDER THE INFLUENCE
01:54PM 20 OF?

01:54PM 21 A. NO. I HAVE SPECULATION FROM ONE OF THE OFFICERS, BUT
01:54PM 22 THAT'S IT.

01:54PM 23 Q. WHAT DID THE OFFICER SPECULATE THAT HE WAS UNDER THE
01:55PM 24 INFLUENCE OF?

01:55PM 25 A. PAINKILLER.

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01:55PM 1 MR. KEMP: THANK YOU.

01:55PM 2 THE COURT: OKAY.

01:55PM 3 MR. WHALEN, ANY QUESTIONS?

01:55PM 4 MR. WHALEN: NO QUESTIONS, YOUR HONOR.

01:55PM 5 THE COURT: MR. PETRAZIO?

01:55PM 6 MR. PETRAZIO:

01:55PM 7 Q. DO YOU KNOW THE DEFENDANT'S NAME IN THAT CASE?

01:55PM 8 A. NO, I DON'T.

01:55PM 9 MR. PETRAZIO: NO FURTHER QUESTIONS.

01:55PM 10 THE COURT: OKAY.

01:55PM 11 THANK YOU, SIR.

01:55PM 12 WE'VE COVERED EVERYBODY. SO, AGAIN, I'VE STRICKEN

01:55PM 13 FOR CAUSE NUMBERS 4, 11, 15, 17, 23, 24, 25, 34, 35, 38, 41,

01:55PM 14 43 AND 46. SO THAT'S 13 FROM 48. 35. ORDINARILY THE DEFENSE

01:56PM 15 WOULD HAVE 10 STRIKES TO EXERCISE COLLECTIVELY, THE GOVERNMENT

01:56PM 16 WOULD HAVE SIX. WE NEED 12 JURORS. THAT'S 28. WE NEED TWO

01:56PM 17 ALTERNATES. EACH SIDE WOULD HAVE ONE ADDITIONAL STRIKE. SO WE

01:56PM 18 NEED ANOTHER FOUR. THAT WOULD GET US TO 32. SO WE HAVE THREE

01:56PM 19 EXTRAS. SO HOW WOULD YOU LIKE TO DIVIDE THOSE? I COULD GIVE

01:56PM 20 TWO MORE STRIKES TO THE DEFENSE AND ONE MORE STRIKE TO THE

01:56PM 21 GOVERNMENT.

01:56PM 22 MR. WHALEN: YOUR HONOR, THAT'S WHAT I WOULD PROPOSE,

01:56PM 23 TWO FOR THE DEFENSE, ONE ADDITIONAL FOR THE GOVERNMENT.

01:57PM 24 THE COURT: ALL RIGHT. RULE 24(B) OF THE FEDERAL

01:59PM 25 RULES OF CRIMINAL PROCEDURE PROVIDES THAT THE COURT MAY ALLOW

01:59PM 1 ADDITIONAL PEREMPTORY CHALLENGES.

01:59PM 2 MS. BATSON AND MR. GONZALEZ, DO YOU AGREE TO
01:59PM 3 MR. WHALEN'S PROPOSAL THAT THE DEFENSE HAVE TWO MORE STRIKES
01:59PM 4 AND YOU HAVE ONE MORE?

01:59PM 5 MS. BATSON: YES, YOUR HONOR.

01:59PM 6 THE COURT: OKAY.

01:59PM 7 DOES THAT WORK OUT MATHEMATICALLY, BONNIE?

01:59PM 8 DEPUTY COURT CLERK: YES.

02:00PM 9 THE COURT: WE NEED TWO ALTERNATES. EACH SIDE WOULD
02:00PM 10 HAVE ONE STRIKE ON THE ALTERNATES. SO I THINK THAT'S RIGHT. I
02:00PM 11 THINK THE WAY THIS WOULD WORK IS IF YOU GO THROUGH JUROR NUMBER
02:00PM 12 42, ENDING BEFORE YOU GET TO NUMBER 43, THE GOVERNMENT WILL
02:00PM 13 HAVE SEVEN PEREMPTORY CHALLENGES ON 1 THROUGH 42, EXCLUDING THE
02:00PM 14 ONES WHO HAVE BEEN STRICKEN FOR CAUSE, AND THE DEFENDANTS WOULD
02:00PM 15 COLLECTIVELY HAVE 12 PEREMPTORY CHALLENGES ON JURORS 1 THROUGH
02:00PM 16 42 UNLESS THE DEFENDANTS WANT TO EXERCISE THOSE SEPARATELY.
02:01PM 17 I DON'T KNOW HOW YOU FEEL ABOUT THAT. IF YOU EXERCISE THEM
02:01PM 18 SEPARATELY, YOU EACH HAVE FOUR.

02:01PM 19 MR. WHALEN: YOUR HONOR, WE'LL DO IT COLLECTIVELY.

02:01PM 20 THE COURT: ALL RIGHT.

02:01PM 21 LET'S SEE, MR. WESTBERG, LET'S MAKE SURE THERE ARE
02:01PM 22 NO JURORS COMING IN HERE. I DON'T KNOW WHO THAT IS.

02:01PM 23 IS THAT AGREEABLE WITH THE GOVERNMENT?

02:01PM 24 MS. BATSON: YES, YOUR HONOR.

02:01PM 25 THE COURT: OKAY. SO FOR 1 THROUGH 42, THE

02:01PM 1 GOVERNMENT HAS SEVEN STRIKES, THE DEFENSE HAVE COLLECTIVELY 12
02:01PM 2 STRIKES. YES, THAT WOULD BE RIGHT. AND THEN ON JURORS 44, 45,
02:02PM 3 47 AND 48, EACH SIDE WILL HAVE ONE ADDITIONAL STRIKE ON THOSE
02:02PM 4 FOUR JURORS.

02:02PM 5 OKAY. LET'S TAKE A RECESS SO YOU CAN MARK YOUR
02:02PM 6 LISTS. MR. GONZALEZ AND MS. BATSON, IF YOU WOULD LIKE TO GO
02:02PM 7 BACK HERE TO THE JURY ROOM, DEFENSE COUNSEL CAN STAY IN THE
02:02PM 8 COURTROOM WITH THEIR CLIENTS.

02:03PM 9 [RECESS]

02:27PM 10 [OPEN COURT, DEFENDANTS PRESENT, VENIRE NOT PRESENT]
02:27PM 11 THE COURT: OKAY. I'M TOLD THAT WE HAVE A JURY
02:27PM 12 SELECTED.

02:27PM 13 MS. SANFORD, ARE YOU READY TO BRING IN THE JURY?

02:27PM 14 COURTROOM DEPUTY CLERK: YES.

02:27PM 15 THE COURT: OKAY.

02:27PM 16 IT IS ALMOST 2:30. WHAT WOULD YOU LIKE TO DO? WE
02:28PM 17 NEED TO HAVE LUNCH. I'M GOING TO SEAT THE JURY, ADMINISTER THE
02:28PM 18 OATH TO THEM AND GIVE THEM SOME PRELIMINARY INSTRUCTIONS AND
02:28PM 19 THEN LET THEM GO. BY THE TIME THEY GET BACK, IF I GIVE THEM
02:28PM 20 AN HOUR AND 15 MINUTES FOR LUNCH, WHICH IS WHAT I USUALLY DO,
02:28PM 21 IT WOULD BE ABOUT 3:45. I WOULD SAY WE START IN THE MORNING.

02:28PM 22 MR. KEMP: I WOULD AGREE WITH THAT, YOUR HONOR.

02:28PM 23 MR. WHALEN: I'M IN AGREEMENT WITH THAT, TOO, YOUR
02:28PM 24 HONOR.

02:28PM 25 MR. PETRAZIO: I AM, AS WELL.

02:28PM 1 MR. GONZALEZ: NO OBJECTION, YOUR HONOR. WE'VE GOT
02:28PM 2 WITNESSES WE NEED TO GO SPEAK TO.

02:28PM 3 THE COURT: OKAY.

02:28PM 4 MR. GONZALEZ: AND, YOUR HONOR, WE DO NEED TO GET
02:28PM 5 THE PALMPRINTS.

02:28PM 6 THE COURT: OKAY. ALL RIGHT.

02:29PM 7 MR. HOLLIS AND MR. WESTBERG, GO AHEAD AND BRING THE
02:29PM 8 JURY IN.

02:31PM 9 [OPEN COURT, DEFENDANTS AND VENIRE PRESENT]

02:31PM 10 THE COURT: ALL RIGHT. PLEASE TAKE YOUR SEATS.

02:31PM 11 LADIES AND GENTLEMEN, A JURY HAS BEEN CHOSEN.

02:31PM 12 MS. SANFORD IS GOING TO READ OFF THE NAMES OF THOSE 14 OF YOU
02:31PM 13 WHO HAVE BEEN CHOSEN TO SERVE ON THIS JURY. SO IF YOUR NAME IS
02:31PM 14 READ, YOU'LL NEED TO WALK AROUND AND HAVE A SEAT OVER HERE IN
02:31PM 15 THE JURY BOX.

02:32PM 16 MS. SANFORD, IF YOU ARE READY, GO AHEAD.

02:32PM 17 DEPUTY COURT CLERK: JEROME LACKEY.

02:32PM 18 JOYCE MARTIN.

02:32PM 19 JUSTIN HILL.

02:32PM 20 CHUNG CHAN.

02:32PM 21 SHERYL ROGERS.

02:32PM 22 GLENDA MARTIN.

02:33PM 23 TERYE DUBNER.

02:33PM 24 MARIE CHARLOTIN.

02:33PM 25 STEPHANIE QUARTARO.

02:33PM 1 JOHN CISSIK.

02:33PM 2 JUDITH HEIKE.

02:33PM 3 AMANDA NU.

02:34PM 4 STARR PEARSON.

02:34PM 5 MICHAEL BAUER.

02:34PM 6 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, YOU
02:34PM 7 HAVE BEEN CHOSEN TO SERVE AS THE JURY IN THIS CASE. OUR
02:34PM 8 LAST TWO JURORS, MS. PEARSON AND MR. BAUER, ARE THE ALTERNATE
02:34PM 9 JURORS. THEY WILL, OF COURSE, BE PRESENT IN THE COURTROOM,
02:34PM 10 LISTENING TO THE TESTIMONY AND OBSERVING THE EVIDENCE ALONG
02:34PM 11 WITH THE FIRST 12.

02:34PM 12 MS. PEARSON AND MR. BAUER, IF FOR SOME REASON DURING
02:34PM 13 THE COURSE OF THE TRIAL ONE OF THE FIRST 12 SHOULD HAVE TO BE
02:34PM 14 EXCUSED, I'LL SEAT YOU IN THAT PERSON'S PLACE.

02:34PM 15 LADIES AND GENTLEMEN, THERE'S ANOTHER OATH YOU NEED
02:34PM 16 TO TAKE AND SOME PRELIMINARY INSTRUCTIONS I NEED TO GIVE YOU.

02:35PM 17 BUT BEFORE DOING THAT, I WANT TO THANK ALL THE REST
02:35PM 18 OF YOU FOR BEING HERE TODAY. I APPRECIATE YOUR TIME AND
02:35PM 19 ATTENTION. I KNOW THAT IT GOES LATE SOMETIMES, ESPECIALLY WHEN
02:35PM 20 WE HAVE CRIMINAL CASES AND THERE'S MORE THAN ONE DEFENDANT WHO
02:35PM 21 IS ON TRIAL. YOU WILL BE PAID FOR TODAY'S JURY SERVICE. I
02:35PM 22 WANT TO THANK YOU VERY MUCH. IF YOU NEED A NOTE FOR YOUR
02:35PM 23 EMPLOYER TO SHOW THAT YOU WERE HERE TODAY, YOU CAN STOP AT
02:35PM 24 THE CLERK'S OFFICE ON THE WAY OUT AND THEY CAN GIVE YOU A SLIP
02:35PM 25 THAT YOU CAN USE TO SHOW YOUR EMPLOYER THAT YOU WERE HERE AS A

02:35PM 1 JUROR.

02:35PM 2 DO ANY OF YOU HAVE ANY QUESTIONS FOR ME? YES, SIR.

02:35PM 3 VENIREPERSON: DO WE NEED TO CONTINUE TO CALL IN FOR
02:35PM 4 ANY PERIOD OF TIME?

02:35PM 5 THE COURT: NO. YOU ARE NOT ON CALL. AND IF YOU
02:35PM 6 ARE SUMMONSED AGAIN WITHIN THE NEXT TWO YEARS, YOU CAN CALL THE
02:36PM 7 COURT CLERK AND TELL HER THAT YOU WERE HERE TODAY AND YOU CAN
02:36PM 8 BE EXCUSED FROM FEDERAL JURY SERVICE.

02:36PM 9 OKAY. THANK YOU, FOLKS. YOU ARE FREE TO GO.

02:36PM 10 [OPEN COURT, DEFENDANTS AND JURY PRESENT]

02:36PM 11 THE COURT: OKAY. PLEASE BE SEATED.

02:36PM 12 LADIES AND GENTLEMEN, THERE'S ANOTHER OATH THAT YOU
02:36PM 13 MUST TAKE, IF YOU WILL PLEASE STAND AND RAISE YOUR RIGHT HAND.

02:36PM 14 DEPUTY COURT CLERK: YOU AND EACH OF YOU DO SOLEMNLY
02:36PM 15 SWEAR THAT YOU WILL AND TRULY TRY THE CASE ABOUT TO BE
02:36PM 16 SUBMITTED TO YOU AND RENDER A VERDICT ACCORDING TO THE LAW AND
02:37PM 17 THE EVIDENCE AS SUBMITTED TO YOU BY THE COURT, SO HELP YOU GOD.

02:37PM 18 THE COURT: OKAY. PLEASE BE SEATED.

02:37PM 19 LADIES AND GENTLEMEN, I'M GOING TO GIVE YOU SOME
02:37PM 20 PRELIMINARY INSTRUCTIONS, AND THEN I'M GOING TO RELEASE YOU
02:37PM 21 FOR TODAY. YOU HAVEN'T HAD LUNCH AND IT IS 2:35. AND SO AFTER
02:37PM 22 I INSTRUCT YOU, WERE YOU TO GO TO LUNCH AND COME BACK, THERE
02:37PM 23 WOULDN'T BE MUCH TIME LEFT. SO I'M GOING ASK YOU TO COME BACK
02:37PM 24 IN THE MORNING AT 9:00, AND WE'LL BEGIN WITH OPENING STATEMENTS
02:37PM 25 BY THE LAWYERS AND THEN GO RIGHT INTO THE GOVERNMENT'S EVIDENCE.

02:37PM 1 BUT BEFORE YOU LEAVE, I NEED TO GIVE YOU SOME PRELIMINARY
02:37PM 2 INSTRUCTIONS.

02:37PM 3 AS JURORS, IT WILL BE YOUR DUTY TO DETERMINE THE
02:37PM 4 FACTS IN THE CASE. I AM THE JUDGE OF THE LAW IN A JURY TRIAL,
02:37PM 5 BUT YOU ARE THE JUDGES OF THE FACTS. SO I'LL GIVE YOU, BOTH
02:37PM 6 ORALLY AND IN WRITING, THE LAW AND A DESCRIPTION OF THE LAW
02:38PM 7 THAT YOU'LL NEED TO KNOW IN ORDER TO DECIDE THIS CASE. BUT
02:38PM 8 YOU ARE THE JUDGES OF THE FACTS, AND YOU'LL DETERMINE THE FACTS
02:38PM 9 IN THE CASE BASED UPON THE EVIDENCE THAT'S PRESENTED TO YOU.

02:38PM 10 THE EVIDENCE WILL CONSIST OF TESTIMONY OF WITNESSES.
02:38PM 11 THERE COULD ALSO BE PHYSICAL EVIDENCE THAT WILL BE SHOWN TO
02:38PM 12 YOU. THERE MAY BE PHOTOGRAPHS THAT WILL BE SHOWN TO YOU,
02:38PM 13 DOCUMENTS THAT WILL BE SHOWN TO YOU. IN THIS COURTROOM,
02:38PM 14 EVIDENCE CAN BE SHOWN ELECTRONICALLY--THAT IS, DOCUMENTARY
02:38PM 15 EVIDENCE CAN BE SHOWN ELECTRONICALLY. THERE'S A DROP-DOWN
02:38PM 16 SCREEN OVER HERE WHICH YOU'LL SEE TOMORROW WHEN WE BEGIN THE
02:38PM 17 TRIAL, AND THERE'S A PROJECTOR RIGHT OVERHEAD, RIGHT OVER
02:38PM 18 THE JURY BOX, THAT WILL PROJECT THE IMAGE OF DOCUMENTS AND
02:38PM 19 PHOTOGRAPHS ON THE SCREEN. SO YOU CAN CONSIDER DOCUMENTS,
02:38PM 20 PHOTOGRAPHS, RECORDINGS, PHYSICAL OBJECTS THAT MAY BE OFFERED
02:39PM 21 AND ADMITTED INTO EVIDENCE, AS WELL AS THE TESTIMONY OF THE
02:39PM 22 WITNESSES. AS YOU'LL RECALL, I WENT THROUGH THE NAMES OF QUITE
02:39PM 23 A FEW WITNESSES. SO THERE MAY BE QUITE A NUMBER OF WITNESSES
02:39PM 24 WHO WILL TESTIFY IN THIS CASE.

02:39PM 25 EACH WITNESS WILL BE PLACED UNDER OATH; EACH WITNESS

02:39PM 1 WILL TESTIFY FROM THE WITNESS STAND, WHICH IS RIGHT HERE TO MY
02:39PM 2 LEFT. YOU'LL HAVE AN OPPORTUNITY TO OBSERVE EACH WITNESS WHILE
02:39PM 3 HE OR SHE TESTIFIES. YOU CAN, OF COURSE, COMPARE THE TESTIMONY
02:39PM 4 OF ONE WITNESS WITH THE OTHERS. AND YOU WILL HAVE TO BEGIN THE
02:39PM 5 PROCESS, BEGINNING WITH THE VERY FIRST WITNESS, OF DECIDING
02:39PM 6 THE CREDIBILITY OF EACH WITNESS. YOU'LL BE THE JUDGES OF THE
02:39PM 7 BELIEVABILITY OR CREDIBILITY OF EACH AND EVERY WITNESS. YOU
02:39PM 8 CAN BELIEVE EVERYTHING A WITNESS SAYS, PARTS OF WHAT A WITNESS
02:39PM 9 SAYS, OR NONE OF WHAT A WITNESS SAYS. YOU USE YOUR OWN COMMON
02:40PM 10 SENSE AND GOOD JUDGMENT TO DETERMINE WHETHER OR NOT YOU THINK
02:40PM 11 THAT PERSON IS TELLING YOU THE TRUTH.

02:40PM 12 NOW, DURING THE COURSE OF THE TRIAL--I'VE TALKED
02:40PM 13 TO YOU ABOUT WHAT THE EVIDENCE IS. THERE ARE CERTAIN THINGS
02:40PM 14 THAT ARE NOT EVIDENCE BUT CAN ASSIST YOU IN UNDERSTANDING THE
02:40PM 15 EVIDENCE AND IN ORGANIZING THE EVIDENCE IN YOUR OWN MIND.
02:40PM 16 THE OTHER THINGS THAT ARE NOT EVIDENCE WILL BE THE OPENING
02:40PM 17 STATEMENTS OF THE LAWYERS AND THE FINAL ARGUMENTS OF THE
02:40PM 18 LAWYERS.

02:40PM 19 BEFORE THE EVIDENCE IS PRESENTED, EACH SIDE--OR
02:40PM 20 EACH PARTY HERE WILL HAVE AN OPPORTUNITY TO MAKE AN OPENING
02:40PM 21 STATEMENT TO YOU. SO THE LAWYERS WILL HAVE AN OPPORTUNITY TO
02:40PM 22 TELL YOU WHAT THEY BELIEVE THE EVIDENCE WILL SHOW IN THE CASE
02:40PM 23 AND TO GIVE YOU A SUMMARY OF WHAT WILL BE SHOWN TO YOU. SO
02:40PM 24 YOU CAN CONSIDER THE OPENING STATEMENT TO HELP YOU GET THE BIG
02:41PM 25 PICTURE OF WHAT THE CASE IS ABOUT AND WHERE THE EVIDENCE IS

02:41PM 1 GOING, BUT THE OPENING STATEMENTS BY THE LAWYERS ARE NOT,
02:41PM 2 THEMSELVES, EVIDENCE. THE TESTIMONY OF WITNESSES IS, OF
02:41PM 3 COURSE, EVIDENCE.

02:41PM 4 ALSO, AT THE CONCLUSION OF ALL OF THE EVIDENCE,
02:41PM 5 YOU'LL HEAR THE FINAL ARGUMENTS OF THE LAWYERS. AGAIN, FINAL
02:41PM 6 ARGUMENTS ARE NOT EVIDENCE, BUT THEY GIVE THE ATTORNEYS THE
02:41PM 7 OPPORTUNITY TO SUM UP THE EVIDENCE FOR YOU AND TO REMIND YOU
02:41PM 8 OF EVIDENCE THAT YOU MIGHT HAVE FORGOTTEN ABOUT.

02:41PM 9 NOW, DURING THE COURSE OF THE TRIAL, I MAY MAKE
02:41PM 10 RULINGS ON OBJECTIONS. IF A QUESTION IS ASKED OF A WITNESS,
02:41PM 11 OPPOSING COUNSEL MAY STAND UP AND OBJECT. IF HE DOES, I'LL
02:41PM 12 MAKE A RULING ON THAT. I'LL EITHER OVERRULE THE OBJECTION OR
02:41PM 13 SUSTAIN THE OBJECTION. IF I NEED TO HEAR FURTHER ARGUMENTS
02:41PM 14 FROM THE LAWYERS ON THE OBJECTION, I MAY ASK YOU TO LEAVE THE
02:41PM 15 COURTROOM SO THAT I CAN HEAR THE ARGUMENTS. I'LL MAKE A RULING
02:41PM 16 ON THE OBJECTION AND THEN BRING YOU BACK INTO THE COURTROOM AND
02:42PM 17 WE'LL RESUME.

02:42PM 18 ALSO DURING THE COURSE OF THE TRIAL I MAY GIVE YOU
02:42PM 19 INSTRUCTIONS OR MAKE REMARKS OR HAVE A CONVERSATION WITH THE
02:42PM 20 LAWYERS. PLEASE DON'T TAKE FROM ANYTHING THAT I SAY THAT I
02:42PM 21 HAVE ANY PARTICULAR OPINION ABOUT THIS CASE. YOU ARE THE
02:42PM 22 JUDGES OF THE FACTS. SO DON'T READ INTO ANYTHING THAT I
02:42PM 23 SAY THAT I HAVE AN OPINION ON WHETHER OR NOT THE DEFENDANTS
02:42PM 24 ARE GUILTY OR NOT GUILTY. YOU WILL MAKE THAT DECISION.

02:42PM 25 ANY EVIDENCE THAT I TELL YOU TO DISREGARD, YOU

02:42PM 1 SHOULD NOT CONSIDER FOR ANY PURPOSE IN THIS CASE. ANYTHING
02:42PM 2 THAT YOU MAY HAVE SEEN OR HEARD OUTSIDE THE COURTROOM ABOUT
02:42PM 3 THIS CASE, OF COURSE, IS NOT EVIDENCE. I DON'T THINK THERE
02:42PM 4 WILL BE ANY NEWS MEDIA FOCUS ON THIS CASE, SO I DON'T THINK
02:42PM 5 THERE WOULD BE ANYTHING THAT WOULD BE WRITTEN ABOUT THIS CASE
02:42PM 6 OR BROADCAST ABOUT THE CASE. IF THERE IS, YOU SHOULD NOT READ
02:43PM 7 THAT OR VIEW THAT. OFTENTIMES THAT'S BASED ON JUST BITS AND
02:43PM 8 PIECES OF WHAT'S PRESENTED IN THE COURTROOM. YOU ARE IN THE
02:43PM 9 BEST POSITION TO DECIDE THE CASE, BECAUSE YOU WILL BE IN THE
02:43PM 10 POSITION TO HEAR FIRSTHAND ALL OF THE TESTIMONY AND SEE ALL
02:43PM 11 OF THE EVIDENCE IN THE CASE.

02:43PM 12 NOW, KEEP IN MIND THE RULES ABOUT PRESUMPTION OF
02:43PM 13 INNOCENCE, THE BURDEN OF PROOF IS ON THE GOVERNMENT, AND THE
02:43PM 14 STANDARD OF PROOF IS "BEYOND A REASONABLE DOUBT." AND I'LL
02:43PM 15 GIVE YOU WRITTEN INSTRUCTIONS ON THOSE CONCEPTS AT THE
02:43PM 16 CONCLUSION OF THE TRIAL.

02:43PM 17 DURING THE COURSE OF THE TRIAL, I THINK ONE OF THE
02:43PM 18 LAWYERS MENTIONED TO YOU THAT WHEN YOU COME IN IN THE MORNING
02:43PM 19 OR YOU COME BACK AFTER LUNCH, YOU MAY PASS THE LAWYERS IN THE
02:43PM 20 HALL. THEY CAN SAY "HELLO," BUT THEY CANNOT ENGAGE YOU IN ANY
02:43PM 21 CONVERSATION. SO YOU WILL UNDERSTAND IF THEY PASS BY YOU AND
02:44PM 22 EITHER DON'T SAY ANYTHING OR SIMPLY SAY "HELLO." THEY CANNOT
02:44PM 23 CONVERSE WITH YOU.

02:44PM 24 ALSO, DURING THE COURSE OF THE TRIAL, YOU CAN, OF
02:44PM 25 COURSE, VISIT WITH EACH OTHER, YOU CAN GET TO KNOW ONE ANOTHER.

02:44PM 1 BUT I WOULD ASK YOU NOT TO DISCUSS THE CASE. IN OTHER WORDS,
02:44PM 2 KEEP YOUR THOUGHTS ABOUT THE CASE TO YOURSELF, AND YOUR
02:44PM 3 THOUGHTS ABOUT THE EVIDENCE THAT'S BEEN PRESENTED. KEEP THOSE
02:44PM 4 THOUGHTS TO YOURSELF UNTIL YOU'VE HEARD ALL THE EVIDENCE. AND
02:44PM 5 THE REASON I ASK YOU TO DO THAT IS BECAUSE I WANT YOU TO KEEP
02:44PM 6 AN OPEN MIND UNTIL YOU'VE HEARD EVERYTHING.

02:44PM 7 AT THE CONCLUSION OF THE TRIAL, THEN, WHEN YOU GO
02:44PM 8 BACK TO THE JURY ROOM AND THE 12 OF YOU BEGIN TO DELIBERATE ON
02:44PM 9 THE CASE, YOU CAN THEN, OF COURSE, VISIT WITH EACH OTHER ABOUT
02:44PM 10 YOUR IMPRESSIONS OF THE EVIDENCE IN THE CASE AND YOUR OPINIONS
02:44PM 11 ABOUT WHETHER OR NOT THE CASE HAS BEEN PROVED TO YOU BEYOND A
02:45PM 12 REASONABLE DOUBT. BUT UNTIL THEN KEEP YOUR THOUGHTS ABOUT THE
02:45PM 13 CASE TO YOURSELF. THAT DOES NOT MEAN YOU CAN'T VISIT WITH
02:45PM 14 EACH OTHER AND GO TO LUNCH TOGETHER. YOU CERTAINLY CAN.

02:45PM 15 ALSO, UNTIL THE TRIAL IS CONCLUDED, YOU SHOULD NOT
02:45PM 16 TALK TO ANYONE ELSE ABOUT THIS CASE. IN OTHER WORDS, YOU CAN'T
02:45PM 17 TALK TO NEIGHBORS OR FRIENDS OR FAMILY MEMBERS ABOUT THE CASE.
02:45PM 18 YOU HAVE BEEN CHOSEN THROUGH THIS LONG PROCESS TO DECIDE THE
02:45PM 19 CASE, AND YOU SHOULD MAKE THE DECISION BASED UPON YOUR GOOD
02:45PM 20 JUDGMENT WITHOUT BEING INFLUENCED BY WHAT SOMEONE ELSE MAY
02:45PM 21 THINK WHO WAS NOT CHOSEN AND WHO IS NOT HERE TO DETERMINE--
02:45PM 22 OR TO HEAR THE EVIDENCE AND TO DECIDE THE CASE.

02:45PM 23 ALSO, I NEED TO TELL YOU THAT YOU HAVE TO DECIDE
02:45PM 24 THE CASE BASED ON THE EVIDENCE PRESENTED. YOU CANNOT DO ANY
02:45PM 25 INDEPENDENT RESEARCH ABOUT THIS CASE. I DON'T KNOW THAT THERE

02:45PM 1 WOULD BE ANYTHING ON THE INTERNET ABOUT THIS CASE. I DON'T
02:46PM 2 THINK SO. BUT YOU CANNOT DO ANY INDEPENDENT RESEARCH ABOUT
02:46PM 3 ANY ASPECT OF THIS CASE. WHETHER IT HAS TO DO WITH DRUGS OR
02:46PM 4 ANY TYPE OF PHOTOGRAPH YOU MAY BE SHOWN, YOU CAN'T GO BEYOND
02:46PM 5 WHAT'S PRESENTED INSIDE THIS COURTROOM. AND THE REASON IS, IT
02:46PM 6 WOULD DENY A PERSON A FAIR TRIAL FOR A JUROR TO BASE HIS OR HER
02:46PM 7 DECISION IN THE CASE ON ANYTHING OTHER THAN WHAT IS PRESENTED
02:46PM 8 HERE IN OPEN COURT. THAT'S THE ONLY FAIR WAY TO DETERMINE THE
02:46PM 9 OUTCOME OF EITHER A CRIMINAL CASE OR A CIVIL LAWSUIT, BECAUSE
02:46PM 10 THEN BOTH SIDES CAN HEAR AND SEE THE EVIDENCE THAT'S PRESENTED,
02:46PM 11 BOTH SIDES HAVE A RIGHT TO EXAMINE OR CROSS-EXAMINE THE
02:46PM 12 WITNESSES AND TO EXAMINE ANY PHYSICAL OR DOCUMENTARY EVIDENCE.
02:46PM 13 SO YOU CAN'T DO ANY INDEPENDENT RESEARCH ON THE CASE. YOU
02:47PM 14 CANNOT CONSULT WEB SITES OR THE INTERNET. AND ALSO WHILE YOU
02:47PM 15 ARE SERVING AS A JUROR YOU CANNOT COMMUNICATE WITH SOMEONE
02:47PM 16 OUTSIDE THE JURY, WHILE YOU ARE SERVING HERE AS A JUROR, USING
02:47PM 17 A SMARTPHONE OR USING E-MAIL OR TEXT-MESSAGING OR TWEETS OR
02:47PM 18 ANYTHING LIKE THAT. THERE HAVE BEEN OCCASIONS WHERE JURORS
02:47PM 19 HAVE--EVEN WHILE THEY'RE IN THE JURY ROOM HAVE BEEN SENDING
02:47PM 20 TEXT MESSAGES TO PEOPLE OUTSIDE THE JURY ROOM, MAYBE BACK IN
02:47PM 21 THE NEIGHBORHOOD OR AT HOME, ABOUT THE CASE AND ABOUT THEIR
02:47PM 22 FEELINGS ABOUT THE CASE. THAT'S IMPROPER. THAT CAN CAUSE
02:47PM 23 A MISTRIAL. SO I NEED TO GIVE YOU THAT INSTRUCTION.

02:47PM 24 NOW, WHEN WE COME BACK TOMORROW MORNING, THE
02:47PM 25 GOVERNMENT HAS THE BURDEN OF PROOF IN THE CASE, SO THE

02:48PM 1 GOVERNMENT HAS THE RIGHT TO PRESENT ITS EVIDENCE FIRST. I
02:48PM 2 ANTICIPATE THAT MR. GONZALEZ OR MS. BATSON WILL MAKE AN OPENING
02:48PM 3 STATEMENT TO YOU AND WILL PRESENT TO YOU AN OUTLINE OF THEIR
02:48PM 4 CASE GOING FORWARD.

02:48PM 5 FOLLOWING THEIR OPENING STATEMENT, THEN COUNSEL FOR
02:48PM 6 THE DEFENDANTS CAN CHOOSE TO MAKE AN OPENING STATEMENT AT THIS
02:48PM 7 TIME OR RESERVE THEIR RIGHT TO MAKE AN OPENING STATEMENT LATER.
02:48PM 8 IT'S THEIR CHOICE.

02:48PM 9 AFTER THE OPENING STATEMENTS, THEN THE GOVERNMENT
02:48PM 10 WILL BEGIN TO PRESENT ITS EVIDENCE AND WE'LL START GOING
02:48PM 11 THROUGH THE WITNESSES AND THE OTHER EVIDENCE THAT THE
02:48PM 12 GOVERNMENT IS GOING TO OFFER.

02:48PM 13 AT THE CONCLUSION OF THE GOVERNMENT'S EVIDENCE,
02:48PM 14 EACH DEFENDANT HAS THE RIGHT, BUT NOT THE OBLIGATION, TO
02:48PM 15 PRESENT EVIDENCE. REMEMBER, A DEFENDANT DOES NOT HAVE ANY
02:48PM 16 BURDEN TO PROVE ANYTHING. THE BURDEN OF PROOF IS ALWAYS UPON
02:48PM 17 THE GOVERNMENT. BUT A DEFENDANT DOES HAVE THE RIGHT TO PRESENT
02:48PM 18 EVIDENCE. SO, IF HE WISHES TO, HE CAN.

02:49PM 19 ONCE ALL OF THE EVIDENCE HAS BEEN PRESENTED TO YOU,
02:49PM 20 I'LL GIVE YOU INSTRUCTIONS ON THE LAW. I'LL GIVE EACH OF YOU
02:49PM 21 A COPY OF THOSE INSTRUCTIONS AND I'LL READ THEM TO YOU.

02:49PM 22 AFTER THAT, YOU'LL HEAR THE FINAL ARGUMENTS OF THE
02:49PM 23 LAWYERS, AND THEN YOU'LL DELIBERATE ON THE CASE.

02:49PM 24 SO THAT'S THE GAME PLAN.

02:49PM 25 LADIES AND GENTLEMEN, I WANT TO THANK YOU NOW FOR

02:49PM 1 THE SERVICE THAT YOU WILL GIVE AS JURORS IN THIS CASE. YOU MAY
02:49PM 2 BE SURPRISED TO FIND OUT THAT YOU'VE BEEN CHOSEN AS JURORS IN
02:49PM 3 THIS CASE. I HOPE THAT YOU WILL FIND IT TO BE AN INTERESTING
02:49PM 4 AND EDUCATIONAL EXPERIENCE. I THINK YOU WILL. MOST JURORS ARE
02:49PM 5 HAPPY THAT THEY HAD THE OPPORTUNITY TO SERVE. AND I THINK
02:49PM 6 THAT WILL BE THE CASE WITH YOU. SO THANK YOU VERY MUCH.

02:49PM 7 WE WILL RECESS UNTIL TOMORROW MORNING AT 9:00.
02:49PM 8 THANKS A LOT. IF YOU WILL GO WITH THE COURT OFFICERS, THEY'LL
02:50PM 9 SHOW YOU WHERE THE JURY ROOM IS.

02:50PM 10 COURT SECURITY OFFICER: ALL RISE.

02:50PM 11 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

02:50PM 12 THE COURT: ALL RIGHT. WE'LL RECESS UNTIL 9 AM.

02:50PM 13 THANK YOU. YOU ARE EXCUSED.

02:50PM 14 MR. GONZALEZ: YOUR HONOR, CAN WE PUT SOMETHING ON
02:50PM 15 THE RECORD BEFORE WE LEAVE?

02:50PM 16 THE COURT: OKAY.

02:50PM 17 MR. GONZALEZ: YOUR HONOR, IF WE COULD, WE WOULD
02:50PM 18 LIKE TO PUT ON THE RECORD THAT MULTIPLE PLEA OFFERS WERE MADE
02:50PM 19 TO EACH DEFENDANT AND THAT THOSE MULTIPLE PLEA OFFERS WERE
02:50PM 20 REJECTED BY THE DEFENDANTS AND THAT'S WHY WE'RE HERE TODAY.
02:50PM 21 AND IF I CAN HAVE EACH DEFENSE COUNSEL INDICATE THAT THEY DID
02:50PM 22 RELAY THE OFFERS THAT I MADE TO THEIR CLIENTS AT THIS TIME.

02:50PM 23 THE COURT: OKAY.

02:51PM 24 MR. KEMP?

02:51PM 25 MR. KEMP: WITH RESPECT TO MR. SALAZAR, I DID,

02:51PM 1 IN FACT, RECEIVE PLEA OFFERS, MULTIPLE PLEA OFFERS FROM
02:51PM 2 MR. GONZALEZ, AND DID CONVEY THOSE TO MY CLIENT, AND HE
02:51PM 3 SUBSEQUENTLY REJECTED THOSE.

02:51PM 4 THE COURT: ALL RIGHT.

02:51PM 5 MR. WHALEN?

02:51PM 6 MR. WHALEN: YOUR HONOR, FOR THE RECORD, WE DID
02:51PM 7 RECEIVE ONE PLEA OFFER FOR MR. BOWEN, WHICH HE DID REJECT.
02:51PM 8 SINCE THAT TIME, AFTER THE ENHANCEMENT PARAGRAPHS HAVE BEEN
02:51PM 9 FILED, THEY DID MAKE AN OFFER TODAY OF 20 YEARS' CONFINEMENT,
02:51PM 10 BUT MR. BOWEN HAS REJECTED THAT. AND SO I WOULD ALSO PUT ON
02:51PM 11 THE RECORD THAT MR. BOWEN AND I HAVE DISCUSSED THE RAMIFICATIONS
02:51PM 12 OF THE INFORMATION ENHANCEMENT. HE FULLY UNDERSTANDS THAT AND
02:51PM 13 KNOWS WHAT THE CONSEQUENCES ARE OF PROCEEDING TO TRIAL.

02:51PM 14 THE COURT: ALL RIGHT.

02:51PM 15 MR. PETRAZIO?

02:51PM 16 MR. PETRAZIO: YOUR HONOR, WITH RESPECT TO MR. VEGA,
02:51PM 17 MR. VEGA AND I HAVE ENTERED INTO MANY DISCUSSIONS REGARDING
02:52PM 18 DISPOSING OF THIS CASE THROUGH THE PLEA OFFER THAT THE
02:52PM 19 GOVERNMENT HAS EXTENDED, AND ON SEVERAL OCCASIONS HE HAS
02:52PM 20 REJECTED THE PLEA OFFER AND INSISTED ON HIS RIGHT TO A JURY
02:52PM 21 TRIAL.

02:52PM 22 THE COURT: OKAY. ALL RIGHT. VERY WELL.

02:52PM 23 I'LL SEE YOU TOMORROW MORNING AT 9:00. THANK YOU.

24 [OVERNIGHT RECESS]

25 -----

1
2 COURT REPORTER'S CERTIFICATE

3
4 I CERTIFY THAT PAGES 1 THROUGH 226 CONTAIN A CORRECT
5 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS.

6 APRIL 21, 2014.

7 

9 JERRY KELLEY, CRR
10 OFFICIAL COURT REPORTER
11 U.S. COURTHOUSE
12 7940 PRESTON ROAD
13 PLANO, TEXAS 75024
14 214-872-4829

15 -----
16

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